the Freeman

Ideas on Liberty

JULY 1968

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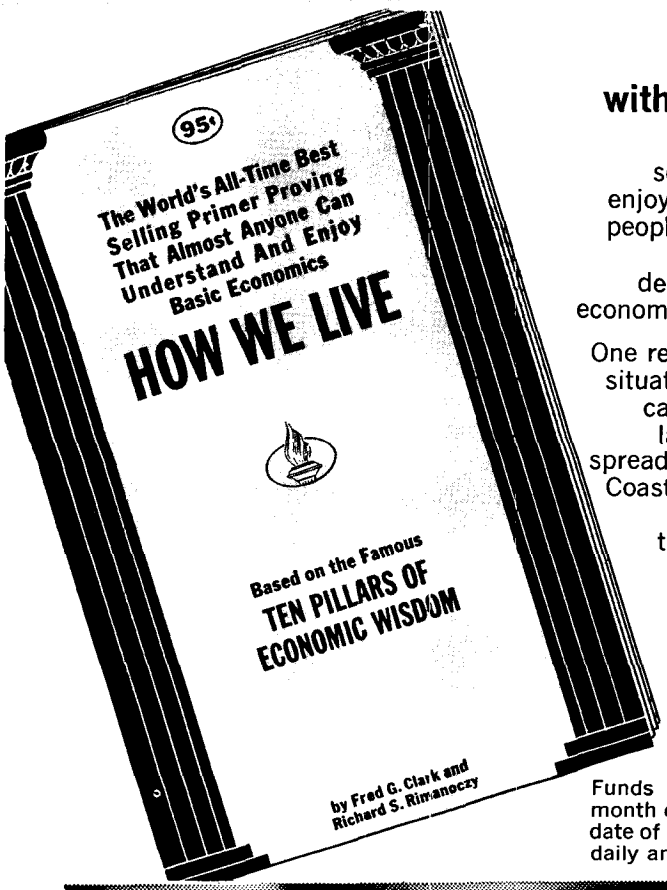
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Teacher with young pupil — from Roman sarcophagus in the Louvre Museum.

MORAL EDUCATION — AND HISTORY

FREDERICK A. MANCHESTER

Dr. Manchester is an educator, formerly of the Department of English, University of Wisconsin.

A PROMINENT Protestant clergyman, the Rev. Dr. Norman Vincent Peale, has recently been quoted as saying that "We are living in probably the most undisciplined age in history."[1] Well, if this age is indeed liable to so serious a charge, it should be of interest to know whether the past owed its differing condition to accident or whether this may have been related to specific measures which it has taken. What, in this connection, have other ages done? I suggest that we direct our attention to a few examples of past practice.

First, what about primitive cultures? At adolescence boys are given "moral instruction, including tribal usage relating to obedience, courage, truth, hospitality, sexual relationships, reticence, and perseverance."[2] — "Sometimes long periods of silence are imposed upon novices in connection with the puberal ceremonies of most primitive peoples. . . . Australian boys go alone into the bush, and are required to maintain silence for long periods. African lads are required to remain

[1] *U. S. News & World Report*, March 4, 1968.

[2] W. D. Humbly, *Origins of Education Among Primitive Peoples*, 1926, cited in *The History and Philosophy of Education Ancient and Medieval*, by Frederick Eby and Charles Flinn Arrowood, 1940, p. 15.

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silent and immobile for long periods. Such practices test a boy's obedience and self-control, and render teachings associated with them especially impressive."[3]

In Ancient Egypt

As to education in ancient Egypt, we are told that morals were its "central feature. . . . Civilization demanded the evolution and enrichment of moral life. To this end the Egyptians sought to train and instruct their young in the art of virtuous living. Their method of moral cultivation was a great advance beyond the simple training of primitive society, and yet it was similar in character. Their chief writings were a series of moral aphorisms and incidents, the distilled experience and wisdom of the fathers, set down for the instruction of their sons. The boys learned this wisdom by copying the 'wisdom literature' again and again as their daily lessons. It was literally 'line upon line, precept upon precept'; but these were learned by writing and not by memorizing them. — The sage old vizier, Ptah-hotep, in the twenty-seventh century B. C., wrote, 'Precious to a man is the virtue of his son, and good character is a thing remembered.' This is said to be the first recorded use of the word *character* in literature. Some five centuries later in the *Instructions* written for King Merikere, his father, who was the Pharaoh, referred to 'God, who knoweth *character*.' The Egyptian use of the word *character* signified 'to shape, to form, or to build.' It had in view especially the work of the potter, in molding clay on his wheel. . . . The literature of remote antiquity had a distinct pedagogical purpose. The first and deepest of all human interests, or, one might say, the first of all sciences, was the knowledge of how to live. Not how to secure food, but how to live with, and act toward, one's fellows, that is, to live in human relations."[4]

Hebrew Education

Of Hebrew education it has been said that it "is unlike any other whatsoever in that it made God the beginning. It began, therefore, by teaching the child the most general and universal, and not the particular. It began with the social, and not the individual; with the personal and ethical, and not with things. It began with the abstract and unseen, and not with the seen and the concrete; with obedience to law and reverence for God, and not in the acquisition of the arts of reading and writing. Truth was deduced from this divine, original principle, and

[3] Eby and Arrowood, *op. cit.*, p. 17.

[4] *Ibid.*, pp. 87f.

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not learned by induction. Jewish education was spiritual, and therefore it stood in direct contradiction to the empirical and naturalistic systems of other peoples. The fact that it has outlasted every other system whatsoever makes it the most successful educational experiment ever staged in the history of civilization."[5]

The Culture of India

In ancient India, a boy belonging to any one of the three upper of the four castes had to live with his parents until he had been invested with the holy thread and initiated into the sacred Gayatri-Mantra. "But as soon as he got his initiation, at the age of eight or ten, he had to leave his father's house and go to the house of his would-be teacher and live with him until he was twenty-five, when he would have become master of all the branches of learning. The life spent in the professor's house is called the life of *Brahmacharya*. This was exactly the opposite of what we call a comfortable and luxurious life. However rich his parents might be, a new student would be treated equally with his compeers."—"The celibate students of the classical days were trained to be hardy and robust and were not only learned in the lore of the day but were also sober and thoughtful. Brought up in the self-renouncing atmosphere of the preceptor's family, they were able to discharge the duties of the householder's life (their life in their second twenty-five years) with strong other-regarding tendencies and with their passions and appetites subdued or moderated. Devotion to duty and spiritual exercises practised long in the preceptor's family made them loving, friendly, broad-minded, truthful and happy."[6]

. . . And of Greece

Of education in ancient Greece, we can catch a glimpse in the following sentences from the *Protagoras* of Plato (Jowett's translation): "Education and admonition commence in the first years of childhood, and last to the very end of life. Mother and nurse and father and tutor are quarreling about the improvement of the child as soon as ever he is able to understand them: he can not say or do anything without their setting forth to him that this is just and that is unjust; this is honorable, that is dishonorable; this is holy, that is unholy; do

[5] *Ibid.*, p. 157.

[6] The two quoted passages are from *For Thinkers on Education* (Mylapore, Madras, Sri Ramakrishna Math, 1948)—the first, here slightly edited, from Book One. p. 3; the second from the anonymous Introduction. p. xi.

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this and abstain from that. And if he obeys, well and good; if not, he is straightened by threats and blows, like a piece of warped wood. At a later stage they send him to teachers, and enjoin them to see to his manners even more than to his reading and music; and the teachers do as they are desired. And when the boy has learned his letters and is beginning to understand what is written, as before he understood only what was spoken, they put into his hands the works of great poets, which he reads at school; in these are contained many admonitions, and many tales, and praises, and encomia of ancient famous men, which he is required to learn by heart, in order that he may imitate or emulate them and desire to become like them. Then, again, the teachers of the lyre take similar care that their young disciple is temperate and gets into no mischief; and when they have taught him the use of the lyre, they introduce him to the poems of other excellent poets, who are the lyric poets; and these they set to music, and make their harmonies and rhythms quite familiar to the children, in order that they may learn to be more gentle, and harmonious, and rhythmical, and so more fitted for speech and action; for the life of man in every part has need of harmony and rhythm."

The Wisdom of the Chinese

In ancient China, we are told, "The most important thing [in respect to 'rightness of relationship'], which all children were taught, was the relation between themselves and other people. There were Five Relationships (just as there were Five Virtues [kindness, good manners, knowledge, uprightness, and honor]) to which every man must be true. These were the relation between parent and child, between husband and wife, between ruler and subject, between older brother and younger brother and between friend and friend. If everyone were true to these five, then truly there would be no unhappiness in the world. If friends are faithful and helpful to each other; if the elder brother protects and guides the younger, and if the younger brother respects and obeys the elder; if the subject is loyal to his ruler and the ruler's first thought is to care for his people; if wife and husband live together in perfect harmony . . . ; if the child honors and serves his parents and the parents cherish their child, where is there any room for evil doing? These five loyalties were to the Chinese what the Ten Commandments were to the Jews and the last one was the most important. For if the son truly honors his parents, he will

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do nothing wrong, since that would bring sorrow and shame upon them, but he will always do his best, in order to give them pride and joy in him. This commandment has held the Chinese people together from Yao's time [Yao was an ancient, legendary king] until this present century, and has had much to do with the amazingly long life of their nation."[7]

The details given are of great interest, but the unique and perhaps the most striking fact about education in China is — or rather has been until very recently — its relation to the government. Confucius (551-479 B.C.) was, as everyone knows, the teacher par excellence of his nation, the revered transmitter of the moral wisdom of his people accumulated through untold centuries. As early as the reign of Wu Ti (140-87 B.C.) examinations based on Confucian classics were employed as the means of selecting state officials, and subsequently this system has been characteristic of China — at least from and including the Tang Dynasty — until the twentieth century. One of the Confucian classics is the *Analects*. This book, then, among others, was the object of the closest possible study by youth aspiring to a post in the government. If, therefore, we wish to know the sort of ethics that inevitably came to their attention, we have only to turn to its pages. From it I quote a number of passages: all of them are (or contain) sayings of Confucius:

"A virtuous ruler is like the Pole-star, which keeps its place, while all the other stars do homage to it." — "If a man can reform his own heart, what should hinder him from taking part in government? But if he cannot reform his own heart, what has he to do with reforming others?" — "At home, a young man should show the qualities of a son; abroad, those of a younger brother. He should be circumspect but truthful. He should have charity in his heart for all men, but associate only with the virtuous. After thus regulating his conduct, his surplus energy should be devoted to literary culture." — "The princely man never for a single instant quits the path of virtue; in times of storm and stress he remains in it as fast as ever." — "The nobler sort of man is proficient in the knowledge of his duty; the inferior man is proficient only in money-making." — "The subdual of self, and reversion to the natural laws governing conduct — this is true goodness. If a man can for the space of one day subdue his selfishness and revert to natural laws, the whole world will call him good. True goodness

[7] Elizabeth Seeger, *The Pageant of Chinese History*, 1962, p. 45.

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springs from a man's own heart." — "Make conscientiousness and truth guiding principles, and thus pass on to the cultivation of duty to your neighbor. This is exalted virtue." — [Confucius, being asked, "Is there any one maxim which ought to be acted upon throughout one's whole life?"] "Surely the maxim of charity is such: — Do not unto others what you would not they should do unto you." — "With coarse food to eat, water to drink, and the bended arm as a pillow, happiness may still exist. Wealth and rank unrighteously obtained seem to me as insubstantial as floating clouds."[8]

Mexico Before the Spanish

From the Old World I now turn for a moment to the New, specifically to Mexico, and to this at a comparatively early period. We are told that here, at the time of the Spanish conquest —

"From a very early age the training of the child was very strict. . . . With such strict training it is not strange that the Spaniards were astonished at the high moral tone of the natives, and their reluctance to tell a lie. Unfortunately contact between the two civilizations soon led to a rapid moral degeneration of the native code.

"Boys of what might be termed the middle class . . . were handed over to special priests for education at about the age of six, or even earlier. They were lodged in special boys' houses in an organization which might be compared to a modern boarding school, save that the discipline in the Mexican schools was much stricter. . . . Education included a very strict moral training. . .

"Another college existed for the education of the sons of the nobility. . . . Here the education was even stricter, and the discipline more rigid. . . . During the whole period of the training, which varied from about six to eight years, the boys were under a very strict supervision. They slept in the college building, and, apparently, seldom saw their parents. . . .

"Girls of the nobility and middle classes were prepared for married life by instruction in girls' schools patterned after those of the boys. They entered these at about the age of five. . . Discipline, as among the boys, was very strict, and long periods of silence were imposed upon them. They were never allowed to leave the college precincts unless accompanied by an old woman, who served as chaperon. This rule was not relaxed even when exercising in the school gardens. Should they meet anyone not connected with

[8] From *The Sayings of Confucius*, by Lionel Giles.

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the school, they were forbidden to speak or even raise their eyes from the ground. — Punishment for infractions of these rules was severe. . . . Even daughters of the rulers were subjected to the same discipline."[9]

Early American Methods and the Christian Influence

I come now, very briefly, to the post-classical period in the Occident — with special reference to America. "In the progress of western education," it has been said, "Christianity has been the supreme influence. It is impossible to understand the institutions and culture of occidental civilization during the past two thousand years without this new ethical force."[10]. . . "Our earliest American Colleges were founded on the model of those of British universities: and here, as there, their avowed design, at the time of their foundation, was not merely to raise up a class of learned men, but specifically to raise up a class of learned men for the Christian Ministry. . . . This was the system which time had honored at Oxford and Cambridge, and which time continued to honor on this continent, with very slight modifications, down nearly to the close of the eighteenth century."[11] "The old education," said Irving Babbitt in 1924, referring to the early American college, "was, in intention at least, a training for wisdom and character."[12]

So much for our American colleges; now the schools. "The most prominent characteristic of all the early colonial schooling was the predominance of the religious purpose in instruction. One learned to read chiefly to be able to read the Catechism and the Bible, and to know the will of the Heavenly Father. There was scarcely any other purpose in the maintenance of elementary schools."[13] Of Horace Mann (1796-1859) it has been said: "His twelve carefully written *Reports* on the condition of education in Massachusetts and elsewhere, with his intelligent discussion of the aims and purposes of public education, occupy a commanding place in the history of American education, while he will always be regarded as perhaps the greatest of the 'founders' of our American system of free public schools. No one did more than he

[9] J. Eric Thompson, *Mexico Before Cortez* (New York, Charles Scribner's Sons, 1933), Chapter II: "The Cycle of Life." Omissions from the quoted passages include details of harsh disciplinary punishments.

[10] Eby and Arrowood, *op cit.*, p. 578.

[11] F. A. P. Barnard, 1872, as cited in *Public Education in the United States*, by Ellwood P. Cubberley, 1947 edition, pp. 33f.

[12] *Democracy and Leadership*, p. 303.

[13] Ellwood P. Cubberley, *op. cit.*, p. 41.

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to establish in the minds of the American people the conception that education should be universal, nonsectarian, and free, and that its aim should be social efficiency, civic virtue, and character, rather than mere learning or the advancement of sectarian ends."[14] From this last quotation it appears that though Mann was an outstanding agent in the transforming of American popular education he meant to preserve ethical values among its aims. Again we encounter the crucial word *character*.

What, then, if anything, to return to our starting point, have past ages done to bring about, or to maintain, a disciplined society? To judge from the examples I have adduced, two things are obvious. One is, emphatically, that they have done *something*. They have not been passive. They have not been "permissive" – if by being permissive we mean allowing youth to grow up in uninhibited responsiveness to their native impulses and desires. The other thing is that they have subjected their children to a process, definite and in some cases severe, of moral education. In short, they would appear to have shared in no small degree the view I have seen curtly expressed, more or less facetiously no doubt, to the effect that each new generation is a fresh invasion of barbarians. They have developed systems of training all unquestionably aimed, whatever their specific nature, at producing disciplined men and women, and if the societies they have created have all been, as Dr. Peale would appear to think probable, more disciplined than ours, the inference is plain.

What Can We Do?

And we in mid-twentieth century America, what, if anything, are *we* doing to civilize *our* incoming barbarians?

By what is perhaps universal belief, the most effective agency for moral training is the home. What of the home in contemporary America? According to Dr. Peale, it lacks discipline, morality, spirituality, and even love. "Two generations of parents who abandoned the old American home quality of discipline have caused our universities to inherit neuroses, neglect, permissiveness, creating a student generation that thinks it can get what it yells for, even student power or control of the universities themselves."[15] Whether or not completely subscribing to these views, probably most observers who reflect on the subject would agree that the American home, partly because of the increasing

[14] *Ibid.*, p. 226.

[15] For source, see footnote 1 above.

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break-up of the family and consequent loosening of its ties, is functioning most inadequately as a moralizing force. Another potential moralizing force, once no doubt secondary in importance only to the home, is the organized church. Here my own testimony must be mainly inference and surmise, but it would seem to me inevitable that with the widespread shift of emphasis in religion from its former task of purifying and elevating the individual soul to concern with social amelioration and the forwarding of humanitarian causes, its effect upon traditionally basic morals would be greatly diminished; and I am unaware of contradictory evidence. Still another potentially major force for right conduct, a force vigorously operative, as we have seen, in colonial times, and no doubt still more or less operative at least as late as a century ago, is formal education — the schools and the colleges. What has become of that force today? My own impression is that apart from religious schools and colleges it is virtually nonexistent.

The emerging contrast between what we are doing in America today in the way of moral education (or rather what we are *not* doing), and what, if the examples I have adduced may be considered reasonably representative, past ages have done, is tremendous — even, perhaps some will feel, startling. What in the way of positive action on our part does the contrast suggest as desirable — even mandatory?

The Answer Comes Clear

The answer to this vital question is luminously clear — even, one might almost contend, logically inescapable — *provided* the following propositions are true: (1) that what purports to be history and what we read as such is substantially authentic; (2) that my examples are in fact substantially representative; (3) that human nature, within the limits of recorded history, has not significantly changed; and (4) that we in America today are seriously dissatisfied with the moral condition of our culture.

As to the first of these propositions there has been scepticism. One recalls the comment — how seriously made I do not know — that history is a lie agreed upon: *un mensonge convenu;* and an outstanding American industrialist has been quoted as saying, comprehensively, that "history is bunk." Such scepticism, serious or otherwise, can, I think, be summarily dismissed.

Of the truth of the second proposition — that my examples are in fact substantially representa-

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tive – I leave the reader to judge.

The third proposition – that human nature has not significantly changed since history was first written – is probably accepted by most people, though I dare say there are some, dazzled by the marvels of modern science and technology, who are firmly convinced that the world has lately begun anew and that mankind has been more or less transformed. It would not much surprise me to hear of a new book, amply supported by laboratory statistics, entitled *Human Nature Today*. In a recent number of *Reader's Digest* (February, 1968) I see Eric Hoffer quoted as observing: "The remarkable thing is that we really love our neighbor as ourselves: we do unto others as we do unto ourselves. . . . It is not love of self but hatred of self which is at the root of the troubles that afflict the world" – and all this despite the fact that genuine religion everywhere has as a main objective the subdual and destruction of the ego! In the passage cited from Mr. Hoffer he does not remark that he thinks human nature has changed, and if he does not think it has done so for, say, two thousand years, he is attributing to the Founder of Christianity an exercise in superfluity that is truly gigantic. The second commandment, said Jesus to the tempting Pharisee, is like unto the first: "Thou shalt love thy neighbor as thyself."

There can perhaps be no plainer proof of the impotence of current criticism than the willingness of an author to expose himself to ridicule by an assertion diametrically opposed, beyond all question, to the moral experience of mankind.

Of the truth of the fourth proposition – that we in America today are seriously dissatisfied with the moral condition of our culture – I leave the reader to judge.

To what, then, if all these propositions may be accepted as corresponding with the facts, does the argument plainly lead? It leads to the conclusion that an imperative requirement of our time is an all-out drive toward intensifying the moralizing activities of the home, the church, and all other relevant social agencies, and the establishment, at all levels, of a definite plan of moral education, wherever it does not now exist, in our educational institutions. To ignore this requirement, in view of the world outlook of the moment, and especially of the consequent urgent demand for political and other leaders trained, not merely technically, but pre-eminently for wisdom and character, might seem to reasonably prudent minds to verge on madness. ◈

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JOHN OTTERSON

WHEN we feel we know others it is remarkable, understanding as little as we do about ourselves. The human personality is immensely complex. The person is a great deal more than a name, far more than certain physical, mental, and emotional characteristics. It is only in the human being that untried ideas are born, and by him that discoveries are made and poems written. Perhaps the true person is the hidden dweller in all things. We have resident within us not one nature, but many. We house a myriad of selves superimposed upon each other like endless reflections in opposing mirrors. Which is the true Shakespeare, the man who wrote the powerful, violent horror of Titus Andronicus or the creator of *A Midsummer Night's Dream!*

The human is an extraordinary mixture of tendencies and strains. And from the time of first young years, certain feelings, certain directions grow stronger, feed their appetite, and begin to hold audience. It is a wondrous thing, both delightful and sometimes frightening, to witness this genesis of growth in the young. And we evolve as a grown person not by advancing all our capacities on an even front, but by the selective development of a few of these and by integrating them into a functioning totality. We are both chemist and crucible in this decision-making process.

If we choose any positive rela-

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tionship to life, we tacitly accept its hazards and handicaps, its dissonance and harmony. Opposition comes to every man who aspires. Dissonance and consonance are as inseparable as the two sides of a coin; they are ceaseless rhythms in life. But what of the challenges: will they be masked or unmasked; will they come as a whisper or as a clap of thunder; will they inflict mere surface scratches, infected wounds, or mortal blows? And what of our direction: is it determined; is it straight as the pull of a magnet or are we like the ancient God, Janus, with two faces looking in opposite directions? Have we permitted ourselves to be caught in a revolving door? When Alice in Wonderland asked the Cheshire cat which path she should take through the forest, the grinning cat simply replied that it would depend on which way she wanted to go and then added that they all lead somewhere.

It may be the crisis moment that ultimately reveals what we are. Or it may be the "long haul," calling for infinite patience and tenacity, determining the endurance values by which we live. There are those whose hopes have been broken again and again, but they will manage to find the resiliency to never be "used-up"; they can "take it" and frame new hopes. And does not the strength of caring, of how much we care, does this not signal the inconveniences one will suffer, the risks one will chance? Half-hearted interest did not take an Albert Schweitzer into his jungle hospital and keep him there year after year. Gigantic battles are waged, fought without bow and arrow, without shield, without helmet, or javelin or cannon, without bayonet or rifle. One can move through the most intense conflicts with serenity. One may hear the command to surrender and yet not give up.

A flower is held before a mirror; the mirror reflects the flower, but has no knowledge of it. And the human eye has no more knowledge, no more awareness, no more consciousness of the flower than the mirror. But our inner eye, our inner reaction to what the physical eye has imaged, projects to the flower its consciousness, its meaning or feeling to us. And this might tell quite a story about the person we are; and what we mean to ourselves.

Every waking moment, consciously or subconsciously, we select, we respond, reject, accept. To live is to be for some things and against others; but always understanding that confusion destroys purpose. We listen, talk, we walk

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or ride. With each breath we project or reflect the results of inner selections, our emotional roadblocks, our mental foxholes: our choosings, likes or dislikes, our appreciations, loves, sensitivities or insensitivities, our enthusiasms and our beliefs, the impoverishment or richness, the peace or war within our being. All are part of our working-out whole; they are the members of our cast, the ingredients of our recipe, the thoughts, the feelings, our way. In closing lines to one of his poems Robert Frost wrote: "The road diverged in a wood, and I — I took the one less traveled by, and that made all the difference."

Stone skeletons, the wrecks of past civilizations, lie scattered in awful silence across the earth's surface. These human societies declined and fell when inner decay became their disease. As we move closer together, do we grow further apart! Do we forget that one of the greatest needs, yearnings of the human being is a sense of the worthwhileness in living? And it is the quality of self-renewal that builds this sense of worthwhileness. With continual effort opposition becomes a time for growth. Do we wish to merely exist, to vegetate, to become "it-things" — emotional strangers on earth? This earth is our home! Do we turn our backs to its natural world — the natural world with its gifts, its sights, its sounds, its colors and inexhaustable forms, its vast spaces and intricate detail? Have we been as absentees for too long a time from its wonders; have we lost our sense of proportion and developed emotional myopia? Have we lowered our eyes from the hills and mountains? And what if beauty has wings; do we grasp only a feather as she flies by? Does not the sunset allow a star to shine more brightly?

Do we let our heads and hearts and those of our young ones grow away from the earth? It is not the education but the preservation of virgin sensibilities that is vital. Can we still taste from a mountain spring; have we treasured the desire to dream? Anatole France writes, "to know is nothing, to imagine is everything." Are we in too much of a hurry to pause; are we too in a hurry to share this pause with some young one? We open the pages of *The Little Prince*: "And a brilliantly lighted express train shook the switchman's cabin as it rushed by with a roar like thunder. 'They are in a hurry,' said the little prince. 'What are they looking for?' 'Not even the locomotive engineer knows that,' said the switchman."

The farmer looks for rain, the fisherman waits for the tides, the

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sailor watches the stars. Let us discover within ourselves. Inquisitive man must part the curtains; he must seek beyond the evidence; his is the lure over the horizon as his lighted candle reveals more darkness. And the individual who has all the answers; could he be the one who is afraid not to have them? What vistas lie ahead of the words, "I do not know." One of the most exciting traits of science is an intense desire to overcome its own ignorance.

Frequently, we refer to a beyond: beyond belief, beyond endurance, beyond understanding. But are we not thinking of the outside beyond rather than the beyond within our being? What frustrations result from inner, bottled-up beyonds? Charles Dickens told of such a situation, a Mr. Creakle, a man of undisciplined passion; but he, unfortunately, could not speak above a whisper. The searcher, the discoverer will see beyond a threatening present; he can sense possibilities and moves into each situation with an alive interest. To him life is not a sordid circus, or a comic satire; it is not a playground for hypocrisy or retarded naivete. Cynicism and bitterness have not injected their venomous solutions into his veins. He is not trapped in stifling corridors with no exits. Nor is he "sleeping away the unreturning time." Within his vision the eye of a needle can be an opening for the longest thread. He is the owner of flexible responses; he is the human being not fighting himself, and he reflects a sound measure of self-trust. A blade of grass pushes through concrete in its journey to reach the sun; the spring crocus reaches upward, cracking a solid crust of winter's ice. Fabre found a universe hatched by the sunlight in a stagnant pool only a few feet wide.

And what of the boy or girl dreaming alone on the hillside? Must our lostness label them anti-social; must we smother them with the suffocating vocabulary of togetherness? Has the game of the individual been called because of darkness! No – we hear the bird, the tree, the warmth of time, the quality of moonlight – they whisper "this way." And accolades to Don Quixote, to Cervantes – Quixote is as much a child as his author was a genius, and as much a genius as his creator was a child. O, to scour that rusty suit of armor; to transfigure the country lass into a great lady; O, to mount that ramshackle steed Rozinante and ride fearlessly into life. Is this not the world of our waking dreams! And is it not the love of life for what it truly is, not what

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man attempts to squeeze into his stuffy mold? Do we escape the normal undulations of routine; do we lift ourselves above despair! Long ago a wise man said, "The flowers of tomorrow are in the seeds of today." We stand, now, not in the past, not in the future. The seeds burst with life; we hold a rainbow in our arms; we delay the sunset's blush for another moment; we shelter the breath of twilight; we touch the rising moon.

Solitude; her hours belong to us; she is the immense stillness; a great tenderness, an at-one-ment, a vast loneliness with no lonely being. Have we both eye and vision: beyond knowledge there must be insight, beyond judgment there must be love. An opened seed joins the wind: a spark from the volcano; a snowflake from the mountain, a heartbeat from the swamp, from the slough of cities, from forgotten towns, a heartbeat from the belly of a ship, from the agony of battlefield.

Columbus wrote in the log of his first voyage across the unknown Atlantic, "This day we sailed on." Nietzsche exhorts man to get off his knees, to stand on his feet, and then he collapses. Tschaikovsky says, "I'm sick again" and writes a symphony; Wagner grabs his stomach in pain and composes Parsival; Renoir, hands crippled by arthritis, has a brush strapped to his arm and paints some of his finest canvases. And what of Lincoln: in the mixed shame and blame of two clashing civilizations, often with nothing to say, he said nothing; frequently, he slept not at all and on occasions he was seen to weep but in a way that made weeping appropriate, decent, majestic.

Wait! a miracle: a woman alone in her tiny home and blind for twenty years suddenly regains her sight. The joy nearly overwhelms her; the colors, the rooms, the furniture, the world she has never seen, she must share this, tell it to all. Her grown daughter walks through the front door. The mother, her unblinded eyes filled with tears, says, "Darling, I see you."

Again a whisper – come lead the way: it is the music of daybreak; it is the pageant of the seasons; it is gentle rain falling through the leaves; it is the fresh morning dew spreading silver over the fields. We feel the mystery; some seals cannot be broken. Man's will for hope. We look above the electric lights, above the neon tubes, and see the stars. ◈

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Separation of Powers and the Labor Act

I. CONGRESSIONAL POLICIES *versus* LABOR BOARD POLICIES

How a delegation of judicial power to an executive agency has brought about a loss of policy-making legislative power to the congress

SYLVESTER PETRO

WHEN the Senate was considering the Taft-Hartley Bill in 1947, Senator Joseph H. Ball, though himself a leading proponent of the Bill, called attention to its outstanding weakness. He said: "The rights guaranteed to employees... could be made a complete dead letter overnight by a National Labor Relations Board that was so inclined."[1]

One of the major objectives of the Taft-Hartley Act was to secure a fairer administration of the national labor policy, an application of the Labor Act more faithful to Congressional intent, than the Labor Board had provided under the Wagner Act.[2] Congress hoped in 1947 that such a result could be achieved by a number of provisions which exhorted the Labor Board to operate more in the manner of a regular court.[3] Unfortunately, however, the Labor Board members were asked to produce judicial results without being given one of the essential characteristics of Federal judicial office – life tenure

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[1] This and subsequent footnotes will be found at end of the article, page 412.

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– and without being placed in the only branch of the Federal government which can, if it wishes, devote itself essentially to non-political, disinterested interpretation and application of law – namely, the Federal judiciary. Asking the short-term, politically oriented Labor-Board members to act as a court was much the same as asking a baseball pitcher to call his own balls and strikes. This is what disturbed Senator Ball. His fears have been borne out.

The labor policies prevailing today are as much those of the Labor Board as they are those declared by Congress in the National Labor Relations Act. The two are radically different in certain critical respects. Since the Labor Board is an *administrative* agency, and since the Constitution delegates all policy-making, legislative powers to Congress, a miscarriage of the principle of the separation of powers has occurred.

This miscarriage was *not* brought about by any defect inherent in the principle itself. It was brought about by a violation of the principle. Influenced by plausible error, Congress merged into a short-term politically oriented executive agency significant aspects of administrative, judicial, and legislative power. That merger upset the delicate balance which the Constitution establishes. It gave the administrative branch a critical edge over and above the natural advantage which it possesses as the activist branch of government – the only branch which possesses and wields substantial and sustained aggressive *power*, much money, and hordes of personnel.

The observable result is that Congress's labor policies now prevail only to the extent that the United States Courts of Appeals continue to exercise in Labor-Act cases the fragments of their constitutional judicial power that Congress and the Supreme Court permit them to exercise.[4]

It adds up to this: If Congress wishes to preserve its legislative policy-making supremacy, it must respect the judicial supremacy of the Federal courts. We attain the height of practical realism today when we rediscover what Americans learned in the eighteenth century, what Englishmen learned and relearned a dozen times from the eleventh century to the seventeenth century, and what Aristotle discovered in the fourth century, B.C., namely, that executive power is strong stuff which must be carefully guarded.

Principles Pertaining to Separation

Here are the practical principles which should influence thought on the Separation of Powers:

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• 1. That a wary legislature and an independent court system with complete and unfragmented judicial power — even working as deliberate allies — are by no means overmatched against an ambitious executive;

• 2. That if the rule of law is to be roughly approximated, executive power must be confined to pure administration, even when plausible arguments, based on convenience or on necessity, are made in favor of adding legislative and judicial powers to the executive power;

• 3. That if all the inordinately complex and intersecting interests of this nation are to be harmonized and reconciled tolerably, it is going to have to be done by policies and legislation wrought from the kind of deliberation and compromise available exclusively to the representative branch of government, namely, Congress;

• 4. That the executive branch is physically and politically unable to confine itself to disinterested interpretation and application of Congress's policies and statutes — especially those conceived and enacted in past times;

• 5. That an independent judiciary such as that envisioned by the Constitution may perhaps not be *sufficient* to insure faithful interpretation and application of the laws, owing to the possibility that men inherently lacking the requisite moral and intellectual virtues will be appointed for life to judicial office; but that nevertheless life tenure in judicial office, as the Constitution requires, is absolutely *necessary* if the policy-making legislative supremacy of Congress is to be preserved; and that, to repeat, if Congress wishes to maintain its constitutional legislative supremacy, it is going to have to accept and affirm the constitutional judicial supremacy of the Federal judges.

There is more at stake here than an academic exercise in political theory. The nation is in trouble. Some of this trouble traces directly to the Labor Board's usurpation of the policy-making power and its clumsily biased exercise of judicial powers. While producing no perceptible social benefit, the Labor Board's administration of the Labor Act has been the source of definite social harm. Since its policies are materially at odds with those of Congress and since Congress represents public opinion far better than the Labor Board does, we may conclude that public sentiment is being flouted. That is evil enough in a country which values representative government. But there are other evils. Perhaps the worst product of the Board's unrepresentative labor policies has been a chronic, debilitating threat to the viability of the American economy, upon which rest both the

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well-being of American citizens and the hopes of decent men and women everywhere in the world.

The Principle of Free Employee Choice

Occupying the vital center of the labor policies declared by Congress is the principle of free employee choice. This principle was not worked out overnight in Congress. On the contrary, it emerged from over a half-century of legislative experimentation. It is visible in primitive and fragmentary form as far back as the Erdman Act of 1898. It figured implicitly in the Clayton Act of 1914 and explicitly in the Railway Labor Act of 1925, the Norris-LaGuardia Act of 1932, and the labor relations legislation of the mid-thirties. It has come to rest in complete and definitive form in the central, dominant provision of the National Labor Relations Act, Section 7, the most significant and most carefully considered expression of Congress's fundamental labor policy. Section 7 declares that:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and *shall also have the right to refrain from any or all of such activities. . . .*

Added in 1947, the italicized clause expressed what may be called a "quantum jump" in public and Congressional evaluation of employee rights and collective bargaining. Prior thereto, as illustrated by the Wagner Act, public and Congressional opinion seemed convinced that collective bargaining was so unqualifiedly in the public interest that there was no need to subordinate it to any other principle or even to place any Federal restraints upon trade-union activities, however coercive, designed to spread collective bargaining. No doubt employee rights to freedom of choice in collective bargaining were even then favorably evaluated; Section 7 of the Wagner Act stated them, and Section 8 was comprehensively designed to forestall employer coercion of employee rights. However, the absence of any prohibition upon union activities designed coercively to impose unionization upon unwilling employees implies that Congress rated collective bargaining superior to employee freedom of choice.

Events during the Wagner Act period (1935-1947) brought about what has proved to be a permanent change of mind both in the general public and in Congress.

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Whereas previously unions and collective bargaining were thought to be unqualifiedly in the public interest, most people began seeing in the late thirties and forties that unrestrained power and privilege in trade union officials and a monolithic pro-collective-bargaining policy could produce serious damage in the form of both abuse of individual employees and weakness in the economy.

Still unwilling to discourage either union expansion or collective bargaining, however, Congress decided to subject them to another principle, the principle of free employee choice, and did so, as we have seen, by expressly declaring a right in employees to refrain from joining unions, or bargaining collectively, or participating in other union activities. There can really be no doubt that in so legislating Congress faithfully represented persistent public opinion. The Congressional majority in favor of the Taft-Hartley Act was overwhelming. It remains so. So far as I can tell, and this is the field of my major long-run interest, public opinion today is more than ever suspicious of unrestrained power and privilege in trade unions. Legislative trends are toward more control of trade unions and collective bargaining, not less. The principle of free employee choice, Congress's basic principle in labor relations law, is not only congruent with the traditions of the country; it is also in accord with the present wishes of the American people as a whole.[5]

Notwithstanding all that, the Labor Board, sometimes blatantly, more often hypocritically and disingenuously, but ever persistently has been attempting to restore the state of affairs prevailing under the Wagner Act. It has been trying, often successfully, to re-elevate union organizing privileges and collective bargaining over the principle of free employee choice.[6]

Favoring Unionization

Upon occasion one may observe the process clearly at work. The relatively recent *Garwin* case[7] is an example. There the Board ordered an employer to bargain with a union even though none of his current employees belonged to that union. According to the Board, the order was necessary in order to remedy prior unfair practices. The fact that the order would have fastened upon employees a union which they obviously had not chosen seemed less important to the Board than the desirability of maintaining the bargaining status of the union involved. Fortunately, a panel of judges was formed on the Court of Appeals for the District of Columbia a majority of which con-

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sidered itself duty-bound to challenge the Board's evaluation of the policy issue. That Court, which does not habitually question the Board's policy determinations when they favor unionization or collective bargaining, held in this case that free employee choice is the paramount principle of the national labor policy and that the Board had incorrectly subordinated it to the bargaining principle.[8]

An almost equally egregious displacement of Congressional policy may be seen in the collective-bargaining rules which the Board has laid down. Congress guardedly and conditionally approved collective bargaining as an institution potentially in the public interest. The approval was conditional upon the free choice of employees; there was to be no collective bargaining *unless a majority of employees in* the appropriate unit desired it. Moreover, the duty to bargain was carefully guarded by an explicit qualification in Section 8 (d) to the effect that neither concessions nor agreements were required.

Employer Harassment

Defying these unmistakable indications of Congressional intent, the Labor Board has held in hundreds of cases that employers must make concessions if they are to satisfy the good-faith bargaining requirement.[9] In the hands of the Labor Board, collective bargaining has become an institution encouraging unreasonable, uneconomic demands by unions and discouraging resistance to such demands by employers.[10]

It is true that the Board does not straightforwardly and explicitly compel concessions – as Judge Wright in an extraordinary opinion recently said it should do.[11] But any specialist in the field will agree that the employer who adamantly refuses to make any concession can expect to be harassed indefinitely by the Board, no matter how honest he is. As a result, employers tend to make concessions or offer counterproposals whether or not they think it correct or economically feasible to do so. As a further result, collective bargaining practices are developing in an unwholesome way, and the law of collective bargaining surpasses the comprehension of even able practitioners.

A long string of NLRB decisions might be presented – each one requiring sustained and complicated analysis – in illustration of the Labor Board's persistent determination to replace Congress's policies with its own.[12] However, being less interested in the substantive minutiae of current labor law than in the general aspects most relevant to the sepa-

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ration of powers, I confine myself to an account of only some of the outstanding examples of the Board's negation of Congressional policies in favor of its own.

One of Congress's dominant purposes in labor legislation over the past twenty years has been to apply equal rules to employers and unions in organizing campaigns. Even a superficial glance at the parallel subdivisions of Section 8 of the National Labor Relations Act will convincingly reveal an intent to govern even-handedly the activities of these normal rivals.[13] Again, this approach faithfully mirrors public opinion, which has always favored the equal rule of law. Yet again, the Labor Board has flouted both Congressional sentiment and the community consensus. The Board has stretched the rules relating to employer conduct to the point where infringement of constitutional right is a daily occurrence.[14] On the other hand, it has confined regulation of even the most aggressive, coercive, and monopolistic union conduct to the level, at most, of mere annoyance.[15]

Whereas Congress in Section 8 (c) of the NLRA expressly immunized expressions of opinion in order to make sure that employees would hear both sides in union organizational campaigns, and could thus register an informed choice on the issues, the Labor Board has steadily constricted those free speech rights. So much so that it is dangerous nowadays for an employer to open his mouth at all during an organizing campaign.[16] And yet, as an outstanding Federal judge, Judge Friendly of the Second Circuit, has said, "If Section 8 (c) does not permit an employer to counter promises of pie in the sky with reasonable warnings that the pie may be a mirage, it would indeed keep Congress's word of promise to the ear but break it to the hope."[17]

Common sense would seem to suggest that an employer cannot coerce employee free choice by unconditionally offering benefits. Yet the NLRB, with the approval of the Supreme Court, has been holding that an employer violates the Act in granting even the most innocuous benefits, or merely promising them, during an organizational campaign.[18] This may not seem a vastly important point. The fact is, though, that, together with the extrastatutory limitations imposed upon employer free speech and other strained extensions of the law, it has made it possible for the Board to find employers guilty of unfair practices whenever they vigorously resist an organizational drive. The Board's apparent objective is to quell all resistance to union expansion. If

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it succeeds, employees and their freedom of choice will be the principal victims.

The Bryant Chucking Grinder Case

With its powers in such formidable array, the Board is in a position to impose collective bargaining virtually at will, quite regardless of the preferences which employees might register in the secret-ballot elections which the Board is tending to avoid. And this in spite of the fact that Congress has indicated that the preferred – if not the exclusive – means of establishing bargaining status for unions and imposing bargaining duties on employers is the secret-ballot election.[19] The tortured, devious methods by which the Board has thus flouted Congressional intent is well worth serious attention. The recent case of *Bryant Chucking Grinder Co.* v. *NLRB*[20] will serve as an example of how the Board is managing to impose collective bargaining, either without elections or, worse, in spite of election defeats. Here is an outline of the case.

1. A union had been defeated in a secret-ballot election in 1959.

2. In 1962 that union began another organizing campaign. The record showed that the union circulated employee authorization cards on the basis of both public and private representations that the cards would be used in order to secure another election, not in order to secure immediate recognition of the union as exclusive bargaining representative.

3. Cards were signed by 198 of the 337 employees in the bargaining unit, but the employer refused to recognize the union on the basis of the cards, insisting instead upon an election (as the law permits the employer to do).

4. An NLRB-conducted secret-ballot election was held in November, 1962. *The union was rejected in this election by a vote of 184 to 124.*

5. In December of 1962 the union filed objections to the election alleging employer interference.

6. Entertaining the objections, the Board ordered a new election.

7. After the Board ordered the new election, the union (for reasons not explained) withdrew both its objections to the past election and its petition for a new election; instead, in January of 1963, the union filed unfair labor practice charges against the employer based on his pre-election conduct.

8. The NLRB Regional Director dismissed these charges on the ground that they were disqualified by the Board's decision in *Aiello Dairy Farms*,[21] establishing the rule that charges would not be entertained when they related back to pre-election conduct.

9. The union appealed the dismissal to the NLRB General Counsel.

10. The General Counsel sat on this appeal for roughly two years while prosecuting other cases in

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which he argued that the Board should overrule the *Aiello Dairy Farms* decision.

11. Finally, in *Bernel Foam Products Co., Inc.*,[22] the Labor Board overruled *Aiello*.

12. The General Counsel thereupon ordered the Regional Director to issue a complaint based on the charges filed by the union in this, the *Bryant Chucking Grinder* case.

13. Owing in part to delays common in the Board's general processes and in part to *exceptional* ineptitude on the part of the Board's Trial Examiner, an NLRB decision was not reached till late in 1966 – some four years after the events in issue and the union's defeat by a vote of 184 to 124.

14. This NLRB decision[23] held:
(a) that the employer had never been entitled to the 1962 election because he had not had a reasonable basis for a "good-faith doubt" of the "majority status" established by the 198 signed authorization cards proffered in 1962;
(b) that the employer's conduct prior to the election interfered with the free choice of the employees and thus invalidated the election; and
(c) that the employer had a duty to bargain with the union from late 1966 on, despite the election defeat, because of the card majority in 1962.
The employer appealed to the Second Circuit.

Writing the court's decision, Judge Hays enforced the Board order with little attention to the facts of the case. Judge Friendly concurred specially, broadly indicating that he would much rather have denied enforcement of the Board order. He went along with Judge Hays, he said, because the Supreme Court's decision in *NLRB* v. *Katz*[24] "was couched in terms so strong that to impose an exception requires more boldness than I possess."[25]

Judge Anderson, dissenting, took the position that it was not a matter of boldness at all but simply one of keeping the Board from inflicting another travesty of Congress's policies on the nation. He pointed out that the employer's pre-election conduct was innocuous; that the union had misrepresented the purpose of the cards, thus disqualifying them as evidence of representative status; and that the Board's decision was imposing a bargaining representative upon employees who had shown only, if they had shown anything, that they did not wish to yield their individual rights to a union. Perhaps the most impressive fact adduced in Judge Anderson's powerful dissent was the difference in the bargaining unit in 1967 from what had been in 1962, when the 197 cards were signed. There were 337 employees in the unit in 1962. There were 400 in 1967. Equally significant, at least sixty of the card-signers had left Bryant Chucking in the intervening years. Thus, Judge Anderson concluded, the Board was giving the union exclusive bargaining status for over 400 employees in 1967 on the basis of signatures by roughly 135 employees in 1962 – signatures

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gained, moreover, on the representation that the cards would be used to secure an election![26]

The importance of the process illustrated by the *Bryant Chucking* case can scarcely be exaggerated. In the last two or three years that process seems to have become the preferred method of establishing bargaining status. If this is true, a wholesale departure from Congressionally declared rules and policies has occurred. It is not a matter only of abandoning the secret-ballot elections which Congress so clearly envisioned as the main means of establishing bargaining status. The full nature of the travesty cannot be appreciated unless one knows that the Board itself has frequently characterized authorization cards as unreliable methods of ascertaining employee choice.[27]

Moreover, the rigged processes evident in *Bryant Chucking* illustrate another radical departure from Congressional intent. One of the main objectives of the 1947 amendments of the Wagner Act was fairer and more judicious conduct by the Labor Board. The 1947 amendments sought to induce Board members to deal more scrupulously with the facts and to give more sensitive heed to due process requirements.[28] But the Labor Board has repaid this Congressional solicitude in customary coin. Since 1947, and especially in the last few years, the Board has issued a long series of decisions which, in terms of arrogant fact-distortion, questionable legal interpretation, and callousness toward due process requirements, at least equal and often surpass the worst that it had produced under the Wagner Act.[29]

NLRB and the Kohler Case

Perhaps the outstanding historical example of such Board conduct is to be found in its decisions in the *Kohler* case. Since I have written a book[30] about the NLRB's first decision[31] in the case and an article[32] about the second,[33] I do not think it necessary to spend time and space on that affair here. Suffice it to say that, in my opinion, that litigation provides in itself sufficient basis for a re-evaluation by Congress of its grant of judicial power to the NLRB.

So disturbing has the Board's performance been that it seems increasingly to try the restraint of Federal judges.[34] The Federal circuit-court judges habitually bend over backwards in an effort to respect the limits on their reviewing power which Supreme Court decision and the statute to some extent impose. Judge Friendly's comment reflects the sentiment of a good many of his brethren on

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the Federal bench and will be found repeated in one form or another in dozens of decisions each year. In short, the U.S. courts of appeals frequently enforce Board orders even when it is perfectly clear that, given a freer hand, they would vacate them.[35] In the opinion of easily a majority of the Federal judges, I would say, the NLRB has a policy of its own which only accidentally intersects and coincides with the policies of Congress.

It would be inaccurate to conclude, however, that *no* vestige of Congress's policies survives today in labor relations law and practice. Those policies do survive to some extent. And in this fact resides another fact of significance to this inquiry into the separation of powers: Congress's labor policies survive in about the same proportion and to about the same extent as do the reviewing powers of the Federal courts of appeals.

A subsequent article will consider the constitutional validity, the practical worth, and the consequences of Congress's having transferred so much judicial power from those courts to executive agencies. ◈

FOOTNOTES

[1] 93 (Daily) Cong. Rec. 5013, 2 Leg. Hist. of the LMRA 1947, p. 1495.

[2] Cf. Rep. No. 105 on S. 1126, pp. 1-3, 8-10 (80th Cong. 1947); H. Rep. No. 510 on H.R. 3020, pp. 36-38 (80th Cong. 1947).

[3] Ibid. And see Sec. 9 (c) and Sec. 10 (b) and (c) of the Act as amended. An amendment to 10 (b) is typical. It exhorted the Board to follow the rules of evidence and procedure prevailing in the Federal district courts, but only "so far as practicable."

[4] The U.S. Courts of Appeals cannot vacate NLRB findings of fact unless there is no substantial evidence in the record considered as a whole to support those findings. Cf. Section 10 (e) of the Act and Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951). Obviously circuit judges will vary considerably in both interpreting and exercising such reviewing power as this necessarily vague standard imposes. Cf. the varying views of Judges Knoch and Schnackenberg in Lincoln Mfg. Co., Inc. v. NLRB, 55 CCH Lab. Cas. ¶ 12044 (7th Cir. 1967). With Judge Hays' view in Bryant Chucking Grinder Co. v. NLRB, 56 CCH Lab. Cas. ¶ 12344 (2d Cir 1967), *compare* that of Judge Anderson, dissenting in the same case. With Judge Bryan's opinion *compare* that of Judge Boreman in NLRB v. Dove Coal Co., 54 CCH Lab. Cas. ¶ 11604 (4th Cir. 1966).

[6] For particularly able criticisms of the Board's distortion of the Congressional policies, see the notes: Card Checks and Employee Free Choice, 33 U. Chi. L. Rev. 387 (1966); Union Authorization Cards, 75 Yale L. J. 805 (1966).

[5] I have discussed the evolution of Congressional labor policy at greater length in *The Labor Policy of the Free Society* at pp. 125 et seq. (Ronald Press, 1957).

[7] ILGWU Local 57 v. NLRB; Garwin Corp. v. NLRB, 54 CCH Lab. Cas. ¶ 11664 (D. C. Cir. 1967), opinion by Burger, J., Bastian, J., concurring; McGowan, J., dissenting on the critical issue.

[8] Judge McGowan dissented on the

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ground that the Board, "if it is to mediate between clashing interests with moderation and restraint, must have scope for inventiveness and experiment." Ibid. at pp. 18084-85. This is about as close as one normally comes to an explanation of the rationale which affirms the existence and endorses the exercise of policy-making discretion in the Board.

[9] The outstanding example of the Board's insistence that employers must make concessions *to the union's demands* (concessions to employees and obvious good-faith intent to reach an agreement not being enough) is the General Electric case, 150 NLRB No. 36 (1964).

[10] For typical examples of NLRB decisions requiring concessions from employers as an aspect of the duty to bargain, see California Girl, Inc., 129 NLRB No. 21 (1960); Cummer-Graham Co., 122 NLRB No. 134 (1959); Fetzer Television, Inc., 131 NLRB No. 113 (1961); James Rubin, 155 NLRB No. 37 (1965). The Board rarely reveals the facts in its decisions, tending as a rule simply to endorse the findings made by the trial examiner in his frequently prolix reports, and the reader is accordingly required to piece out the basis of the holding.

[11] Cf. United Steelworkers v. NLRB (Porter Co.), 56 CCH Lab. Cas. ¶ 12332 (D.C. Cir. 1967) (Miller, J., dissenting) and the same case at an earlier stage: 53 CCH Lab. Cas. ¶ 11238 (D.C. Cir. 1966).

[12] I cite the following cases as a mere cross section of decisions in which the U.S. courts of appeals have found more or less serious shortcomings in the Board's handling of fact or law. In some cases, the court completely denied enforcement; in others, partly. The classification is in the numerical order of the circuits: Caribe General Electric Co. v. NLRB, 53 CCH Lab. Cas. ¶ 11094 (1st Cir. 1966); NLRB v. Purity Foods, Inc., 55 CCH Lab. Cas. ¶ 11896 (1st Cir. 1967); Cooper Thermometer Co. v. NLRB, 55 CCH Lab. Cas. ¶ 11868 (2d Cir. 1967); NLRB v. Nichols, 55 CCH Lab. Cas. ¶ 12016 (2d Cir. 1967); Firestone Synthetic Fibers Co. v. NLRB, 55 CCH Lab. Cas. ¶ 11783 (4th Cir. 1967); NLRB v. Logan Packing Co., 56 CCH Lab. Cas. ¶ 12278 (4th Cir. 1967); Home Town Foods, Inc. v. NLRB, 55 CCH Lab. Cas. ¶ 12019 (5th Cir. 1967); NLRB v. Ortronix, Inc., 56 CCH Lab. Cas. ¶ 12051 (5th Cir. 1967); Southwire Corp. v. NLRB, 56 CCH Lab. Cas. ¶ 12110 (5th Cir. 1967); Rivers Mfg. Corp. v. NLRB, 55 CCH Lab. Cas. ¶ 11902 (6th Cir. 1967); NLRB v. Swan Super Cleaners, Inc., 56 CCH Lab. Cas. ¶ 12239 (6th Cir. 1967); Frito-Lay, Inc. v. NLRB, 56 CCH Lab. Cas. ¶ 12264 (7th Cir. 1967); National Can Corp. v. NLRB, 55 CCH Lab. Cas. ¶ 11771 (7th Cir. 1967); Dierks Forests, Inc. v. NLRB, 56 CCH Lab Cas. ¶ 12274 (8th Cir. 1967); NLRB v. Frontier Homes Corp., 54 CCH Lab. Cas. ¶ 11701 (8th Cir. 1967); NLRB v. Transmarine Navig. Corp., 55 CCH Lab. Cas. ¶ 12028 (9th Cir. 1967); NLRB v. TRW Semi-Conductors, Inc., 56 CCH Lab. Cas. ¶ 12299 (9th Cir. 1967); J. C. Penney Co. v. NLRB, 56 CCH Lab. Cas. ¶ 12150 (10th Cir. 1967); NLRB v. Groendyke Transport, Inc., 54 CCH Lab. Cas. ¶ 11690 (10th Cir. 1967); Retail Clerks v. NLRB, 54 CCH Lab. Cas. ¶ 11653 (D.C. Cir. 1967); Clothing Workers v. NLRB, 53 CCH Lab. Cas. ¶ 11335 (D.C. Cir. 1966).

[13] Section 8 (a) (1)-(5) defines employer unfair practices; Section 8 (b) (1)-(7) defines roughly parallel or analogous union unfair practices. Sections 8 (c)-(f) establish certain principles and provide for certain types of rules applicable to both unions and employers.

[14] See the cases cited in note 12, supra.

[15] Documentation of this assertion is beyond the scope of this paper. The process has been too long and too tortured for any kind of brief treatment. I have, however, written two books which demonstrate in painstaking detail how—contrary to Congressional intent—the Board has liberated unions from any serious control by the NLRA. See: *How the NLRB Repealed Taft-Hartley* (Labor Policy Assn., 1958); and *Power Unlimit-*

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ed: The Corruption of Union Leadership (Ronald Press, 1959). See also my labor law articles in the N.Y.U. *Annual Survey of American Law* dating back to 1951, and my Unions, Housing Costs, and the National Labor Policy in 32 Law and Contemp. Prob. 319 (1967).

16 Cf. NLRB v. TRW Semi-Conductors, 56 CCH Lab. Cas. ¶ 12299 (9th Cir. 1967); National Can Corp. v. NLRB, 55 CCH Lab. Cas. ¶ 11771 (7th Cir. 1967); Southwire Corp. v. NLRB, 56 CCH Lab. Cas. ¶ 12110 (5th Cir. 1967); Amalgamated Clothing Workers v. NLRB (Hamburg Shirt Corp.), 54 CCH Lab. Cas. ¶ 11609 (D.C. Cir. 1966).

17 NLRB v. River Togs, 56 CCH Lab. Cas. ¶ 12097 at page 19624 (2d Cir. 1967).

18 NLRB v. Exchange Parts Co., 375 U.S. 405 (1964).

19 See the note, Union Authorization Cards, 75 Yale L. J. 805 (1966), against which the only authority of any significance is the Supreme Court's opinion in UMW v. Arkansas Oak Flooring Co., 351 U.S. 62, 71-72 (1956). As Judge Friendly has pointed out, the brief discussion of the question found in that case "would hardly preclude Supreme Court re-examination of this issue." See NLRB v. S. E. Nichols Co., 55 CCH Lab. Cas. ¶ 12016 at page 19359, note 1 (2d Cir. 1967).

20 56 CCH Lab. Cas. ¶ 12344 (2d Cir. 1967). The facts here recounted are drawn mainly from Judge Anderson's dissenting opinion.

21 110 NLRB 1365.

22 146 NLRB 1277 (1964).

23 160 NLRB No. 125.

24 369 U.S. 739 (1962).

25 See 56 CCH Lab. Cas. ¶ 12344 at p. 20476.

26 Judge Anderson said: ". . . I think a bargaining order, by imposing on respondent's employees a form of representation concerning which a substantial majority has never had an opportunity to express a preference, disregards the employees' Section 7 rights, and undermines the most fundamental policies of the Act." Ibid. at page 20476.

27 See: Union Authorization Cards, 75 Yale L. J. 805, 828-31 (1966).

28 See notes 2-3, supra.

29 A goodly number of these will be found among the cases collected in note 12, supra.

30 *The Kohler Strike: Union Violence and Administrative Law* (Regnery, 1961).

31 128 NLRB 1062 (1960).

32 "Reward the Guilty," *Barrons* (Jan. 1965).

33 148 NLRB 1434 (1964).

34 In NLRB v. Purity Foods, Inc., 55 CCH Lab. Cas. ¶ 11896 at page 18952 (1st Cir. 1967), Judge Woodbury said after reviewing the testimony: "The Board's conclusion to the contrary flies in the face of reality." This is among the milder of the many critical references which circuit judges continue to make to NLRB findings. In NLRB v. Getlan Iron Works, Inc., 55 CCH Lab. Cas. ¶ 11950 at page 19116 (2d Cir. 1967), Judge Feinberg said: "Because this is one of those rare instances where we find a lack of substantial evidence to support one of the Board's key findings, we decline to enforce the order to bargain and remand for further evidence." I doubt that Judge Feinberg could find any considerable number of other Federal judges who share his confidence in the Board's fact-finding.

35 Year after year numerous court of appeals decisions contain the following observation in one or another form: ". . . we have no hesitancy in saying that were we the fact finders we would have difficulty finding support for the charges of unfair labor practices." NLRB v. Witbeck, 56 CCH Lab. Cas. ¶ 12148 (6th Cir. 1967). See also: Int. Tel. & Tel. v. NLRB, 56 CCH Lab. Cas. ¶ 12101 at page 19643 (3rd Cir. 1967); NLRB v. Plymouth Cordage Co., 56 CCH Lab. Cas. ¶ 12135 (5th Cir. 1967); NLRB v. Elco Corp., 55 CCH Lab. Cas. ¶ 11898 (9th Cir. 1967), where the court said: "Had this court been called upon to pass originally on the merits of this case, we might have disagreed with the ultimate conclusion of the Board."

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Confiscation & Class Hatred

HENRY HAZLITT

LONDON—When politicians in power in any country have wrong, fixed ideas, not even the worst crisis will lead them to abandon those ideas. They will only administer still greater doses of the same quack remedies that brought on the disease.

The budget measures recently announced by Roy Jenkins, the British chancellor of the exchequer, are a perfect illustration. They have been praised both there and abroad for their harshness and brutality. It is true that they impose further sacrifices on the British taxpayers, but most of these are unnecessary and irrelevant. In the long run the new measures can only discourage effort, saving, investment, and production.

To restore confidence in the pound the budget should be balanced, of course; but it should be balanced by reducing grossly inflated welfare spending. Instead, the new budget actually increases total spending to $27.6 billion in fiscal 1969 compared with $26.1 billion in the preceding fiscal year. The surplus is to be achieved by even more onerous taxation. Revenue for fiscal 1969 is estimated at $30.9 billion, up from $26.8 billion. This would leave a nominal surplus of $3.3 billion, compared with a surplus of only $718 million in fiscal 1968, which ended March 31.

Even before the announcement of the new levies, Britons paid Draconian taxes. The standard income tax rate is 41¼ per cent. On top of this are imposed surtaxes which bring marginal rates as high as 91¼ per cent on income and 80 per cent on estate duties.

The Jenkins proposals, imposing stiff increases on "purchase taxes" (up to rates of 50 per cent

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on items like phonograph records and cameras) were praised because they did not increase ordinary personal income, corporation, or capital-gains taxes. But to make up for this, the new budget imposes a savage additional tax (ostensibly to run only for one year) on investment income over $7,200 a year. The rate progresses from 10 per cent on that amount to 45 per cent on amounts over $19,200. Because this special impost comes *on top* of the regular income tax and surtax, it actually makes the total tax on investment income in the higher brackets more than 100 per cent. In fact, a man with investment income of more than $19,200 could pay a total tax of 136 per cent on amounts over that figure.

An added grim feature of this confiscatory tax is that the recipient of investment income is not allowed to escape it even by giving that income away.

There are various other follies in the new Labor Party measures. The stupid "selective employment tax" has been increased by 50 per cent. Wage and dividend increases are to be limited to 3½ per cent a year. The government is to be allowed to roll back individual prices that it considers too high. All of these measures will restrict, discourage, and distort production. Yet the most ominous measure is still the expropriation of investment income, in a country once considered to be the most responsibly governed in the world.

Even the *London Economist*, today far from a conservative journal, gagged at this. "The spectacle of people purposelessly enjoying the despoiling of somebody else is very nasty; and as a great roar of delighted *shadenfreude* greeted the levy, the Labor backbenches suddenly looked extraordinarily nasty and loutish."

The act of confiscation is totally irrelevant to restoring confidence in the pound. It can only undermine that confidence. Even on the government's own calculations it will bring in less than 1 per cent of its total revenues. It penalizes precisely saving and investment, the most essential element for the increase of production, real wages, and economic growth. It was imposed solely to satisfy a blind envy and class hatred. ◈

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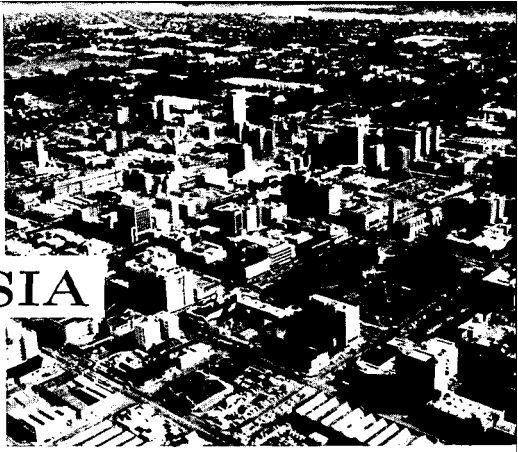
SOME LESSONS OF RHODESIA

WILLIAM HENRY CHAMBERLIN



Salisbury City
(Courtesy of Rhodesia National Tourist Board)

THERE IS NOTHING like a visit to a distant and controversial land to give a sense of perspective and realism. I have recently returned from such a visit to Rhodesia, a landlocked country of 150,000 square miles in south central Africa, which has been under economic siege by the United Nations – with the participation of the United States – for much of the period of two and a half years since its declaration of independence in November, 1965.

The basic cause of Britain's refusal to accept Rhodesia's self-proclaimed independence – a status it has accepted for many former dependencies with less literate and educated electorates – was a difference of opinion with the Rhodesian government, headed by Ian Smith, as to how far and how fast the African population (about 4 million, compared with some 235,000 whites, mostly of British and South African stock) should be enfranchised. Rhodesia had been practically self-governing for almost half a century; the British connection had been mainly formal, finding expression in such details as the nomination of a governor-general as representative of the Queen. There had been no British interference in Rhodesian domestic legislation.

The United Nations Charter does not authorize the imposition of such sanctions and trade restrictions as have been imposed on Rhodesia because of domestic legislation. So the excuse for this declaration of economic war was

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that Rhodesia, under its present regime, was a threat to the peace of the world – an allegation without a shred of serious proof.

It should be noted that Rhodesia, unlike South Africa, is not a country of racial *apartheid.* There are 13 Africans in the 65-member legislature. There could be more if the two radical African parties, Zapu and Zanu, had not demanded a one-man, one-vote system and urged a boycott of elections until this was established. Under the present system, the franchise is limited by property and educational qualifications. Fifty members are elected on an A roll, with higher qualifications; fifteen on a B roll, where the qualifications are lower.

Hotels and higher education in Rhodesia, again in contrast to South Africa, are multiracial. Perhaps of greater significance is that more than half the police force is African and a considerable part of the small army is composed of Africans. Notwithstanding the UN's curious excuse for sanctions, Rhodesia has never sent any military force outside its own borders. There have been two invasions of its territory by terrorist guerrillas, mostly refugees from Rhodesia who received training in sabotage and guerrilla warfare in adjacent Zambia (formerly Northern Rhodesia) and from communist-ruled countries farther afield: Cuba, the Soviet Union, and Red China. Both incursions failed to achieve anything except virtual wiping out of the guerrilla forces and minor casualties for the Rhodesians. Significantly, an African unit, the Rhodesian African Rifles, bore the brunt of the second incursion, and with no apparent strain on its loyalty.

Since the declaration of independence, Rhodesia has been under double attack, from hostile incursions across the Zambezi River on its northern border, and from such forces of African nationalist subversion as may exist within the country. It has also been the object of an economic blockade, first launched by Great Britain, then extended by the United Nations.

Signs of Tranquillity

The British Viscount plane used by Rhodesian Airways landed at Salisbury, capital of Rhodesia and named after a famous British Conservative Prime Minister of the late nineteenth century. I should not have been surprised to find here and there signs of tension and unrest. But nothing of the kind appeared on the horizon. Salisbury on a Sunday afternoon in the clear heat of its high prairie altitude was about as peaceful a spot as one could imagine.

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There were few police and no soldiers in sight. Many Africans lay stretched out in the city parks, quite at ease. Rhodesian acquaintances told me that unscrupulous foreign photographers took pictures of these recumbent figures and published them with captions indicating that here were victims of repression. Our acquaintances drove us into the suburban environs of the capital, where we enjoyed a typical British tea at the country home of some friends. If those present were sitting on a powder keg, they gave a pretty good impression of being totally unaware of it.

These friends and other Rhodesians I met reported that the state of public order had very much improved since UDI (unilateral declaration of independence). This, so they told me, was because previous governments had been weak on law enforcement. The African political groups, Zapu and Zanu, had taken advantage of this situation to run a fierce competition for recruiting new members at high entrance fees. Europeans were not much endangered; but law-abiding Africans who refused to pay were apt to have crude bombs hurled through their windows; their thatched huts were set on fire and the occupants beaten and left for dead. Tribal chiefs (most Rhodesian Africans live under the traditional tribal organization) were stabbed, shot, strangled, and clubbed.

Keeping the Peace

The Smith regime put a stop to these disorders, using some methods that would not be approved by the American Civil Liberties Union, notably detention and restriction of residence without trial. The leaders of the two parties, Nkomo and Sithole, and some other agitators were placed in detention. According to Minister of the Interior Nicolle, some 20 to 30 persons are held in indefinite detention. A larger number, perhaps three or four hundred, are subjected to residence restriction and forbidden to move out of their own districts until the authorities are convinced they are bent on no mischief.

Practically all the Europeans in Rhodesia and probably a considerable number of Africans (although here the only testimony has been the marked absence of unrest since UDI) believe that restraints on the liberty of a few hundred individuals, reaching the rigor of detention for perhaps thirty of them, is a price worth paying for domestic order.

Of two factors that might have shaken the stability of the Rhodesia Front regime—internal subversion and harassment by guer-

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rilla bands from abroad – both have so far proved nonstarters. Rhodesia is an open country, which welcomes a quarter of a million tourists every year and incidentally offers some scenes of great natural beauty such as Victoria Falls and some fine preserves of African wild life. Had there been serious trouble from domestic insurrection or foreign invasion, it could not have been concealed. There was no such trouble; and this might suggest to an inquiring mind that African as well as European Rhodesians welcomed the measures taken to stop arson, assaults, and thuggery. As a result of these measures, residents of Salisbury, Bulowayo, and other Rhodesian towns could sleep a good deal more soundly in early April than could those of Washington, Chicago, Baltimore, Pittsburgh, and other American cities plagued or threatened by hoodlumism and vandalism.

Sanctions No Problem

What of the economic war declared on Rhodesia, first by Great Britain, then by the United Nations? This interference with the normal course of the country's import and export trade has inflicted some damage on Rhodesia's economy, but not nearly enough to induce any talk of running up the white flag of surrender. Tobacco, formerly a principal export and fairly easy to identify, has been hard hit and has caused some shifting to other crops and to a different type of tobacco which the Rhodesians hope will be easier to market abroad. Sugar exports also have been affected; and the inflow of foreign capital, while it has not stopped altogether, has slowed down. Ironically enough, this slowing down of the economic growth rate has injured less the Europeans than the Africans, for whose welfare the British Labor Party and the United Nations profess so much concern. It is the Africans, with their high birth rate, who are most in need of new job openings.

Rhodesia is self-sufficient in food and cannot be starved, or even inconvenienced, into surrender. The United Nations could have struck a harder blow if it had been able to make its oil sanctions effective, because Rhodesia has no domestic source of this fuel. But oil sanctions have become a joke. In the beginning, their effect was blunted by improvised shipments from Rhodesia's friendly southern neighbor, South Africa, which rushed supplies by train and truck. Sympathetic students at the University of Pretoria, the capital of South Africa, rolled a big drum of

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oil to Salisbury as a gesture of solidarity.

Now, the need for these emergency shipments is over. Rhodesian oil supplies come in regularly through the port of Laurenco Marques, in Portuguese Mozambique. Thence, they are shipped through South Africa to Rhodesia. The price has gone up a little; but no Rhodesian motorist is seriously inconvenienced.

The sanctions have also speeded up considerably the development of Rhodesia's home industries, notably in the field of clothing. Rhodesian manufacturers not only have begun to supply many home needs; they also have pushed energetically into the nearest available export market, South Africa, and so vigorously that South African firms are asking for protection.

British Meddling

British-Rhodesian relations, which at one time had seemed close to a settlement following a conference of Prime Minister Ian Smith with British Prime Minister Harold Wilson, took a turn for the worse in March when Wilson invoked an authority never before claimed for the British Privy Council and also pushed Queen Elizabeth into the situation by having her reprieve three convicted African murderers whose sentences of death were about to be executed.

The Rhodesian government went ahead with these executions, then with two more of Africans who had committed murder under especially heinous circumstances. The left-wing press in England and some Afro-Asian circles at the UN had a field day denouncing "Hangman Smith." There was no reflection of this sentiment in Rhodesia, where it was felt that some shabby common criminals had been given an utterly undeserved status as martyrs in an atmosphere of ignorant emotionalism. It was felt, however, that the government had made its point with five executions, decisively rejecting British interference with the course of Rhodesian justice. So, there was no protest when some thirty other Africans held in cells reserved for those condemned to death were given commutations of sentence.

I had an opportunity for a personal talk with Mr. Ian Smith, head of the independence movement and Prime Minister of the existing government. (Incidentally, Mr. Smith was recently refused permission to visit the United States to accept a speaking invitation at the University of Virginia. Mr. Smith had fought on the allied side during World War II as an aviator and suffered serious facial injuries, requiring consider-

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able reconstruction surgery. With what may be considered a rather strange scale of comparative values, the same State Department that barred Mr. Smith as a presumably undesirable alien was willing to spread out the red carpet for Mr. Oginga Odinga of Kenya, who has been strongly linked by rumor with Chinese communist activities in Kenya. Mr. Odinga, notorious for his hostility to what he calls neo-colonialism, i.e., Western economic and financial aid, was only prevented from coming at the time because his own government withheld his passport.)

Mr. Smith conveyed the impression of being a straightforward, outdoor type of man, a good representative of his countrymen and as frankly outspoken as might be expected of the Governor of Kansas or Nebraska.

Willing and Able Leader

Had all prospect of agreement with Britain disappeared with the executions?

Mr. Smith made it clear that he did not believe this was necessarily the case. The executions were a matter of internal Rhodesian jurisdiction, with which Britain had never claimed the right to interfere in the past. If, however, the British government was inclined to press the situation to the point of a final breach, Rhodesia was prepared to go it alone as an independent republic. "We are independent now," Mr. Smith emphasized. "But we still consider ourselves in the Commonwealth and recognize the sovereignty of the Queen."

The Prime Minister dismissed as quite unrealistic a question about the possibility of black rule in Rhodesia. He declared that Rhodesia's military and police security forces could easily handle the problem of guerrilla infiltration across the border from Zambia. To a question whether some form of federation with South Africa might follow a complete dissolution of the tie with Great Britain he remarked that this subject had not come up for consideration, although the possibility could not be ruled out. A number of South Africans came up with the first pioneer settlers with Cecil Rhodes (who gave his name to the country) and Rhodesia's ties with South Africa have always been closer than with any other country.

Reason for Optimism and Lessons to be Learned

Mr. Smith expressed confidence that the African population supports the present regime. Most of them live, he said, in a tribal form of organization, where the chief

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sets forth the sense of the tribal group after consultation with village headmen. Discussing the subject further, he said: "So far as the educated African is concerned, he can be consulted and he can express his opinion. These people are the minority. The majority don't even understand what a constitution is. So it is difficult to ask them to express an opinion on a particular type of constitution."

Expressing gratitude to Americans who had shown understanding of the situation in Rhodesia, Mr. Smith topped the interview with the following statement of confidence in the future of his country: "We are winning the economic war without any question; sanctions have advanced the output of our domestic economy by five or ten years, or even more. As far as security is concerned, I think the record shows that we have less trouble now than we had before our independence. I think we have less trouble than most other countries in the world, and with a lower ratio of police than in your own country and Britain, and a lower ratio of armed servicemen, also. We are a happy, peaceful, prosperous, and expanding economy. I would say all these things give us just cause to be optimistic."

I left Rhodesia with the feeling that several lessons may be learned from its recent experience.

First, a politically conscious, well-educated group of people, convinced that their civilization and way of life are at stake, can maintain a predominant political position, provided there is no strong movement of rebellion. So far, there are no signs of any such movement in Rhodesia.

Second, sanctions applied against such a group are much less effective than is commonly supposed. There are always loopholes in the machinery, and the energy and skill of the Rhodesians in evading economic boycotts considerably exceed the will and ability of the outside world in enforcing them.

Third, while it is always difficult to predict the longevity of administrations, I think it is quite likely that Mr. Smith, with the support of the great majority of his countrymen, will outlast more than one head of a contemporary African state, and also his principal opponent, Mr. Harold Wilson. Britain's Labor Party is in a decline and Rhodesians are confident that an alternative Conservative administration would leap at the chance to find some face-saving means of burying the dismal fiasco of sanctions. ◈

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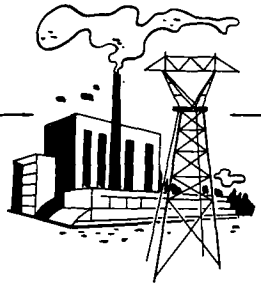

a Power that Serves

WALTER L. UPSON

IN September, 1903, I went to work in the Testing Department of the General Electric Company in Schenectady. Later that fall, I was one of half a dozen ordered to report at the New Power Station to help with some testing of a new steam turbine-electric generator. This was at a time when steam turbines were a new and quite exciting development. Parsons turbines had been developed in England and the Westinghouse Company had secured rights from this company for America. General Electric Company then obtained rights for the Curtis turbine and was pushing these as fast as possible. This turbine-generator unit was of the vertical shaft type in contrast with the horizontal Parsons type. The General Electric Company had already built one 2,000 kilowatt unit which was successfully installed and working in the New Power plant. Now a much larger unit of 4,000 kilowatt capacity was ready for testing. It was for this that I was assigned. The machine was quite impressive, standing, I should say, about fifteen or perhaps twenty feet high. It was running when we arrived and made a considerable roar.

We testers took our places before the various meters, or measuring instruments, and proceeded to take readings as load was applied to the generator. Suddenly there was a flash; something had gone wrong and the great machine was slowed to a halt. We were all amazed. Then, someone found on the floor part of a broken bolt about two inches long that had evidently been involved. The man in charge was E. B. Raymond, very much the boss, big and commanding. Mr. Raymond showed us the

Mr. Upson, now retired, was for many years a professor of electrical engineering. Besides his books on the subject, he has written numerous scholarly and scientific articles.

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broken bolt and demanded that we find the other part of it. We scurried around everywhere looking, but to no avail. Then he announced that the one who found the piece would be given a week's vacation – just at Christmas time – at full pay.

This was indeed a temptation; certainly it was to me. Then I remembered that Mr. Elmer Sperry had once told me that when I lost anything I was not to waste my time looking wildly around but rather to stop and think where it would naturally be. So I did just that, and decided that the piece sought must be somewhere inside the generator. I got a wire, put a hook on it, climbed to the top of the machine, and began to probe around as best I could down inside. It was a very difficult thing to get into, and my effort was futile. Finally, the order was given to tear down the machine, for nothing could be done until the trouble was found. And then it was found, embedded in the laminations of the armature, right where I had been trying to probe. I did not get my holiday.

Now, I have told this story to impress on you that a 4,000 kilowatt turbogenerator at that time was something to stand in awe of. Not many years earlier it had required ten pounds of coal to generate one kilowatt-hour of electricity; now, with much larger and more efficient generators only three pounds were required, and engineers were working hard to bring about still greater perfection. This meant reducing the price of electricity to you and me, which was done when most everything else was costing more. The only reason why our monthly electric bills did not go down was that we kept using more and more electricity as it became available for more and more uses. That march of progress has kept going to this day, spurred by advancing technology in a free society.

Continuing Progress

In February, 1910, it was my privilege to go with a large group of engineering students on a sightseeing trip to Chicago. Of the many engineering wonders there on display, none was more impressive than the great new Fisk Street electric station nearing completion. It had been designed to consist of eight or ten huge 5,000 kilowatt turbogenerators of the vertical type giving a total capacity of forty or fifty thousand kilowatts, a great help toward meeting Chicago's growing needs for electricity. But the most surprising thing was that before the last machine was installed orders came to tear it down, and to tear the others down in turn. For while

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this was going on, new and larger units were being substituted in their places. It had been found that the same station could accommodate 12,500 kilowatt units making the station two and a half times as large, and again reducing the cost of electricity. On our inspection we were warned not to get too close to these giant machines which contained such concentration of power.

Now we jump to the new station at Cahokia, across the river from St. Louis, and to the year 1930. Turbogenerators were getting so huge that it was found best to discard the vertical type and go to the horizontal. Here, the plan was for eight 20,000 kilowatt machines, giving a total capacity of 160,000 kilowatts. In order to reduce the cost of electricity still further, every new device was adopted. Here, the great supplies of coal were at hand and the coal was pulverized and blown into the boilers. The steam was superheated, and the Mississippi River was called on for cooling water to the extent that it was said the station used six times as much water as the entire city of St. Louis. But the planned-for units were never completed, for again it was found that larger ones would be more efficient. The 20,000 kilowatt units were taken out and 60,000 kilowatt machines were put in their places. Again, electricity was cheaper for the public.

How Far?

How far was this process to go? Do not think it is all a case of the size of the machines; far from it. Every item of use in the electric system was being subject to intense scrutiny and research by the engineers and scientists who worked under the free enterprise system which has prevailed in America and still prevails except in a few notable cases where public ownership advocates with political support have succeeded in gaining control. The real progress in this great field can be said to have been the exclusive result of the efforts of the free workers. Public ownership does not make for progress; all the progress it can show is what it has adopted from the free workers. That story has been told many times, and I do not intend to spend more time on it here. I firmly believe that nothing we have of a like nature is so well done, so inexpensive, so reliable, and still so progressive, as the privately-operated electric power plants. We do not half appreciate them.

Now I have taken you from the small turbogenerators, considered huge in their day, from 2,000, 4,000, 5,000, 12,500, 20,000 and even 60,000 kilowatt capacity, which

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culminated in 1930. But that is not all, for still the great machines grew and grew. Three years ago, we were apprized that they had reached 500,000 kilowatts, and today there are on order several machines which will have a capacity of 800,000 kilowatts each, large enough in fact for one machine to provide electricity for a city of half a million population. These great machines no longer demand ten or three pounds of coal per kilowatt-hour. They have been made so efficient that they require only seven-tenths of a pound for each kilowatt-hour produced, thus saving great quantities of coal and still lowering the cost to the users.

Freedom from TVA

I firmly believe that were the Tennessee Valley Authority turned over to private operation with no more government intervention than is now given our private electric companies, the people of Tennessee could still have their low-cost rates without having to rely on the rest of the United States to make up annual deficits. At the same time, operation would be at a profit and a substantial tax would be turned in each year to the Federal treasury, thereby, theoretically, at least, reducing the burden upon each one of us. And the service would be at least as good, if not better.

One other point I wish to make here: You should not overlook the fact that electric power is an engineer's field of action. You may not know what this implies, but I tell you its great implication is that the work will be done honestly, straightforwardly, efficiently, and in the best-known, up-to-date engineering manner. For that is the way engineers work. ◈

Voice of Experience

Do YOU know what amazes me more than anything else? The impotence of *force* to organize anything. There are only two powers in the world – the spirit and the sword. In the long run the sword will always be conquered by the spirit.

NAPOLEON BONAPARTE, *Paroles de Napoleon*

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CLARENCE B. CARSON

The Rise and Fall of England

5. LIBERTY AND PROPERTY SECURED

With this power of creation and this passion for independence, property has reached an ideal perfection. It is felt and treated as the national life-blood. The laws are framed to give property the securest possible basis, and the provisions to lock and transmit it have exercised the cunningest heads in a profession which never admits a fool. The rights of property nothing but felony and treason can override. The house is a castle which the king cannot enter. The Bank is a strong box to which the king has no key. Whatever surly sweetness possession can give, is tasted in England to the dregs....

RALPH WALDO EMERSON, 1847

Now a considerable proportion of the law defining the rights of the individual and delimiting the power of the state over him was constructed in the eighteenth century....

E. NEVILLE WILLIAMS

THE intellectual thrust to liberty and a government with its powers counterbalanced eventually bore fruit in the form of practical liberties protected by law. These protections to and extensions of liberty were mainly the work of the Whig Party acting in Parliament and of judicial interpretations by the courts, though others played some part in it. The great age of the expansion of English liberties falls generally within the years from the adoption of the Bill of

Dr. Carson, Professor of History at Grove City College, Pennsylvania, will be remembered for his earlier FREEMAN series, *The Fateful Turn, The American Tradition,* and *The Flight from Reality.*

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Rights in 1689 to the final repeal of the Navigation Acts in 1849, the latter culminating a long effort to establish free trade. This prolonged movement to secure liberty and property runs parallel with England's rise to greatness and world leadership, a parallel that is hardly an accident. The progressive expansion of liberty released the energies of the English people for the role they were to play.

To appreciate the growth of liberty, it will be useful to view it in contrast to the oppression which preceded it. Since a general survey of this subject has already been presented, it is only necessary here to make a summary presentation of the state of liberty, or oppression, as it was in 1688 prior to the onset of great changes.

In 1688 religious intolerance and oppression was still fully established. Not only was there an established church, but also dissenters and Roman Catholics were prohibited to exercise their religion, barred from political participation (by the Test Act), and otherwise underprivileged by law. Government by law was continually threatened by monarchical suspension of laws. Publishing was hampered and restricted by licensing requirements, by censorship, by virtual monopolies granted to certain printers, and by strenuous laws against libel. Property was hardly an individual possession, since its use was hampered by all sorts of restrictions and limitations inherited from a long past. Laws still prohibited enclosure; guild and apprenticeship regulations hampered the entering of trades; monopolies granted by government shut off commerce to newcomers; and export and import taxes stood in the way of trade. Medieval relics and mercantilistic interventions smothered initiative and placed heavy burdens upon enterprise. Freedom of speech, press, of the use of one's faculties, and protections for the constructive use of one's property were still forlorn ideals.

Gradual Changes Linked with the English Heritage

It is not practical in the short scope offered here to recount in detail the story of the successful struggle for liberty that occurred over a century and a half. That would require a book, at the least. It will be possible here to touch only a few of the high points, to indicate some general trends, and to suggest how it was accomplished. In general, it should be pointed out that the establishment of liberty and protection of property in England was not accomplished by drastic changes or revolution. On the contrary, it was achieved by gradual changes with-

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in the context of the English heritage.

The movement falls very roughly into three periods: first, the Glorious Revolution and a decade or so after, from around 1689 to the early 1700's; second, a slow growth and expansion spread over much of the eighteenth century, followed by some reactionary measures during the French Revolution and Napoleonic Wars; third, a new surge in the second quarter of the nineteenth century.

It is important to note, too, that the thrust to liberty embraced the whole spectrum of liberties, ranging from freedom of the press to the securing of property to individuals. One writer calls attention to the phenomenon in this way: "It should be emphasized . . . that the press was an integrated part of the entire social organism affecting and being affected by the society of which it was a part. For example, the decline of government controls in the eighteenth century parallels the growth of private enterprise capitalism and the increase in democratic processes in government. . . . All three were inextricably interrelated."[1] That liberty is all of a piece appears to be borne out by historical tendency.

[1] Frederick S. Siebert, *Freedom of the Press in England* (Urbana: University of Illinois Press, 1965), p. vi.

One other general point needs to be made before surveying the highlights of the securing of liberty and property. Historians frequently write as if there were some close connection between the degree of political participation by the people and the extent of liberty. It is true that a popularly based government may be limited in its exercise of power by the electorate. But this is not necessarily the case, as evidenced by the existence of numerous despotic governments in the twentieth century which nonetheless have universal suffrage. The connection between political democracy and liberty does not appear sufficiently close to warrant discussing the two together or including in this study an account of the movement for and extension of the franchise.

Toleration Act of 1689

The confines of government power were greatly loosened to allow much greater individual liberty by the Glorious Revolution of 1689 and the acts of the next few years following that event. Religious toleration, of sorts, was established by the Toleration Act of 1689. This act was of particular benefit to Protestant dissenters, for they were not only relieved of penalties for observing their faith but also permitted to hold meetings, to have their clergy, and to

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carry on many of the activities hitherto reserved to conformists. However, they still suffered certain disabilities for their nonconformity, i. e., exclusion from political participation by the Test Act, the payment of taxes for support of the Church of England, among others. Such toleration was not extended to Roman Catholics or to non-Trinitarians.[2] In practice, however, there was considerably more toleration after this than the law allowed, if strictly interpreted. Religious enthusiasm abated in the eighteenth century, and with it the desire to persecute in matters of faith and observance. The way to remove disabilities was even made easy for those who would go through the motions of conformity.

A long stride toward establishing freedom of the press was made in 1695 when the House of Commons refused to renew the Printing Act. This Act had embodied a variety of evils including licensing requirements, a virtual monopoly to the Stationers Company, restraints on the import of foreign books, a special privilege of printing to one gentleman, and so on.[3] Of the general conditions that prevailed after the lapsing of this act, one writer says: "At the close of the seventeenth century several important trends in the liberation of the press can be discerned. The prerogative powers of the crown were gone forever. The licensing requirements had been abolished, and the printing trade was at last free from commercial regulation. The powers of the Stationers Company as a trade monopoly had been finally smashed."[4] While there were still some restrictions on free expression, such as for libel and sedition, England was very near to having a free press.

Rights of Individuals

The Glorious Revolution also set the stage for greater protections to the individual from arbitrary imprisonment. Not only was the monarch restrained in this regard but also the courts adopted new rules and procedures which removed much of the arbitrariness from trials and punishment. The Bill of Rights prohibited cruel and unusual punishments, and men were no longer flogged to death. Also, no more women were burned alive after 1688. "After 1696 two witnesses had to be produced against the accused in treason trials; the accused were entitled to full use of counsel, and to a copy of the indictment, together

[2] See E. Neville Williams, ed., *The Eighteenth Century Constitution* (London: Cambridge University Press, 1960), pp. 42-46.

[3] See *ibid.*, pp. 399-401.

[4] Siebert, *op. cit.*, pp. 301-02.

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with a list of crown witnesses and of the jury. In 1697 the last Act of Attainder in English history was passed. . . . Judges began to protect even Quakers from the Church courts. . . . The inadmissibility of hearsay evidence. . . . at last won general acceptance after 1688."[5]

However, the penalties prescribed as punishment for crimes were still quite harsh. It was not until 1736 that witchcraft ceased to be a crime. Moreover, following the Glorious Revolution and through much of the eighteenth century there was a great increase in the number of crimes for which the death penalty was prescribed. This was particularly true for stealing. From one point of view, these harsh penalties indicate a determined effort to protect property. As one writer says, "There was a tendency in William's reign for the law to be made more savage in protection of private property. Statutes made shoplifting and the stealing of furniture by lodgers punishable by death."[6] Debtors' laws were tightened as well. "By the end of George II's reign no less than 160 felonies had been declared worthy of instant death. . . , among them being such minor offences as sheep-stealing, cutting down a cherry-tree. . . , and petty larcenies from dwelling-houses, shops, or the person."[7] The aim of this legislation may have been quite laudable. The population was increasing as was its mobility. There existed no regular police for the protection of property, and there was much determination that property should be respected. However, the harshness of the laws frequently led juries not to convict. In consequence, rather than the absolute protection of property as intended, there was a resulting uncertainty as to punishment.

Trade Restraints Lifted

A much clearer benefit of the Glorious Revolution was the great reduction of the obstacles to trade and business. There followed a great assault upon chartered monopolies and special trading privileges. " 'Trade,' Parliament declared in 1702, 'ought to be free and not restrained.' In 1701 a Chief Justice said that royal grants and charters in restraint of trade were generally void because of 'the encouragement which the law gives to trade and honest industry.' Such charters were 'contrary to the liberty of the sub-

[5] Christopher Hill, *The Century of Revolution* (New York: W. W. Norton, 1966), p. 290.

[6] *Ibid.*, p. 289.

[7] Basil Williams, *The Whig Supremacy* (London: Oxford University Press, 1942), p. 60.

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ject.'"[8] Nor were these empty words. T. S. Ashton says, "In 1689 the Merchant Adventurers were shorn of most of their powers, and ordinary Englishmen became free to export cloth to all but certain reserved areas. In 1698 it was enacted that anyone might trade with Africa. . . . And in the following year commerce with Russia and Newfoundland was declared open to all." Some monopolies persisted (and the Navigation Acts still bound colonial trade), but "most of the field lay open to competition."[9] There followed a great surge in trade and commerce.

For much of the eighteenth century, the extension of liberty was gradual and undramatic. Frequently, it occurred as a result of nothing more than failing to enforce restrictive legislation. For example, there existed authority for fixing wages and prices, but little positive (or negative) action came of this power. Or, the effects of a law might be ameliorated without actually repealing the law. For example, from 1743 onward an Indemnity Act was passed annually by Parliament allowing religious nonconformists an extension of time to qualify politically under the Test Act. One writer observes that as many as two-thirds to three-quarters "of those employed in all branches of the public service had never complied with the law – some had never even heard of it; and Lord Goderich informed the House of Lords that he had never been called upon to qualify till he was made Chancellor of the Exchequer. . . ."[10] The British were hardly in an experimental mood so far as legislation was concerned for much of the eighteenth century.

Private Ownership of Land

There was, however, a major development during that century in the matter of private property in land. It is known as the movement for enclosure of lands. Much of the farm land of England was still unenclosed at the beginning of the eighteenth century. This meant, in effect, that such farms were not consolidated units under the control of a single farmer. On the contrary, the land was divided into small strips, and one man's holdings would consist of a number of such strips dispersed among the holdings of others. The problem was further complicated by the existence of Commons – pasture, woods, or idle lands to which those

[8] Hill, *op. cit.*, pp. 263-64.

[9] T. S. Ashton, *An Economic History of England: The Eighteenth Century* (London: Methuen, 1955), p. 130.

[10] William L. Mathieson, *England in Transition* (London: Longmans, Green, and Co., 1920), p. 236.

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who lived on an estate claimed common privileges in its use. These arrangements, which were relics of medieval organization, were major obstacles to the effective use of the land. It was very difficult to introduce improvements in farming techniques, in seed, or in pasture use. Any change in the way the land was utilized would affect the privileges of others. In short, most of the advantages of private property were missing.

Prior to the eighteenth century, sporadic efforts at enclosure had been going on for two centuries or more. But whenever they occurred, a hue and cry was usually raised against them. They were blamed for depopulating the countryside, for making the lot of the poor harder, and for upsetting the social arrangements of England. Parliament passed various acts of a general nature to inhibit enclosures. Any exception, to permit enclosure, required a special act of Parliament. These, however, became increasingly easy to obtain in the eighteenth century. One historian summarizes the progress in this way: "And their number increased year by year as time went on: there were three Acts only in the twelve years of the reign of Queen Anne; from 1714 to 1720, about one every year. During the first half of the century the progress, though gradual, became more marked: thirty-three Acts between 1720 and 1730, thirty-five between 1730 and 1740, thirty-eight between 1740 and 1750. From 1750 to 1760 we find one hundred and fifty-six such Acts; from 1760 to 1770 four hundred and twenty-four; from 1770 to 1780 six hundred and forty-two. . . . while between 1800 and 1810 the total reached was . . . an unprecedented . . . nine hundred and six Acts. . . ."[11]

An Act of Enclosure spelled out the procedures by which the ancient titles to strips of land and privileges to the use of Commons could be extinguished and these lands be consolidated into individually owned farms. For example, if an individual had title to thirty dispersed strips of land consisting of one acre each, he might receive a thirty-acre farm plus his portion of the land used in common, perhaps ten acres more. Mantoux says, "In fact, all this was tantamount to a revolution throughout the parish – the land being, so to speak, seized and dealt out again among the landowners in an entirely new manner, which, however, was to leave untouched the former rights of each of them."[12]

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[11] Paul Mantoux, *The Industrial Revolution in the Eighteenth Century* (London: Jonathan Cape, 1961, new and rev. ed.), pp. 141-42.

[12] *Ibid.*, p. 168.

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By this means, then, lands were widely brought under private ownership and control. There was, in addition, much consolidation of holdings by purchase.[13] One effect of all this was not long in being felt in England: much increase in agricultural productivity.

Labor Relations

There were some important changes affecting employers and workers in the last years of the eighteenth and in the early years of the nineteenth century. A major obstacle to technological change was the attitude of workers to new machines and techniques. There were a considerable number of riots in the latter part of the eighteenth century in which machinery was broken up and sabotage by workers occurred. Earlier in English history the government had actually intervened on occasion to prohibit the introduction of new techniques. Now, however, the government no longer opposed new machinery, and acts were passed for the suppression of such riotous and destructive activities. Government forces were used to protect property and allow manufacturers to make innovations on many occasions.[14] In 1799, the famous (or infamous) Combination Act was passed, to be followed the next year by a modified act along the same lines. "The Act of 1799 laid down that any person who joined with another to obtain an increase of wages or a reduction of hours might be brought before a magistrate and, on conviction, sentenced to three months in prison."[15] The Act itself may have been unjust, but it illustrates the determination to leave decisions to individuals. In 1813, a clause of an Elizabethan Act empowering Justices of the Peace to fix wages was finally dispensed with.[16] In 1814, the Statute of Apprentices was repealed, and most of the obstacles to the entry into a trade were removed. "And with the repeal in 1824 of the Spitalfields Act of 1773, which had provided agreed wage rates in the uneconomic silk industry, legislative interference with wages vanished completely until 1909."[17]

Progress to 1850

The movement toward the establishment of individual liberty did not, of course, always proceed in a nice straight line over the years, with no detours or rever-

[13] See *ibid.*, p. 172.

[14] *Ibid.*, pp. 400-08.

[15] T. S. Ashton, *The Industrial Revolution* (New York: Oxford University Press, a Galaxy Book, 1964), p. 93.

[16] Mantoux, *op. cit.*, p. 456.

[17] R. K. Webb, *Modern England: From the Eighteenth Century to the Present* (New York: Dodd, Mead, and Co., 1968), p. 153.

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sions to the old ways. There was considerable repression of some liberties during the period of the French Revolution and the Era of Napoleon. There was much fear among the English political leaders that the revolution in France would take root and spread in England. Still, the general tendency over the years was in the direction of the expansion of liberty.

The last great surge of that movement got under way in the 1820's and continued to the 1850's, or thereabouts. Under the impulse of the ideas of such men as Adam Smith, David Ricardo, Jeremy Bentham, Richard Cobden, and John Bright, among others, and following the political leadership of such men as Robert Peel, the remaining obstacles to individual liberty and free use of private property were largely swept away during these years. The Test and Corporation Acts were repealed in 1828, virtually removing the political disabilities of Protestant dissenters. Of course, dissenters had to consent to the continued existence of the established Church of England, but they were now otherwise free. An Act emancipating Roman Catholics was passed in 1829; Catholics could now serve in political office legally.

In the wake of vaunted electoral reforms of 1832, some important blows were struck for liberty. An act of Parliament in 1833 provided for the abolition of slavery in the British colonies. There was an attempt to accomplish this great reform with as little damage to vested interests and property as possible. Twenty million pounds were paid in compensation to West Indian slaveholders. In addition, complete abolition was to be achieved over a period of years. "All Negro children under six were to be unconditionally free after the passage of the act, but those over six were to be held in apprenticeship. . . . If all their wages were kept by their 'employers,' the apprentices could earn their freedom in seven years." In the same year, too, the East India Company lost its last monopoly, that of the China trade, and the Bank of England lost its monopoly of joint-stock banking.[18]

Repeal of the Corn Laws

There is much else that could be told, but it will suffice to conclude this summary of the high-points of the securing of liberty and property by discussing the establishment of free trade. Mercantilism died hard in England, and the last aspect of it to be cut away was the protectionism of tariffs and related interventions. The most famous of the tariffs were the Corn Laws. They ac-

[18] *Ibid.*, p. 219.

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quired such great fame because an Anti-Corn Law League was organized in 1839 under the leadership of Richard Cobden; the League mounted such an attack upon these laws that their repeal was a *cause celebre*. Historians, too, have generally made the repeal of these laws the symbol of the triumph of free trade.

The Corn Laws were the result of enactments on a number of occasions in the seventeenth and eighteenth centuries. Their object was to encourage the export of wheat and other grains and to discourage the importing of grains. More broadly, they were a part of a mercantilistic effort to increase exports and decrease imports. To effect this, a bounty was sometimes paid on grain exported while tariffs discouraged imports. Adam Smith charged that these laws aimed "to raise the money price of corn as high as possible, and thereby to occasion, as much as possible, a constant dearth in the home market."[19]

To Help the Poor

It was, as can readily be seen, a particularly good place to launch an assault against protection. The tendency of such protection, if it fulfilled its aim, would be to drive up the price of bread in England. And even the poorest of men will generally have bread. Important changes were made in the Corn Laws in the 1820's, along with other tariff reductions. However, it was not until the 1840's that the work was finished.

In 1845, 430 articles were removed from the tariff lists, and other duties greatly reduced. In 1846, the hated Corn Laws were finally repealed. In a mopping up exercise, the Navigation Acts also were repealed.[20] One economic historian describes the upshot of these developments in this way: "In a broad view the repeal was the coping stone of the edifice of free trade; it marked the final stage in the struggle against mercantilism. Henceforth for nearly a hundred years England discarded the system of economic nationalism . . . in favour of international co-operation."[21]

It should be clear that much of the work of securing liberty and property in England consisted of what would nowadays be called negative actions, of the removal of privileges, of the repeal of laws, of the withdrawal of intervention, of allowing restrictive legislation to lapse, and so forth. Yet the im-

[19] Quoted in Ashton, *An Economic History of England*, p. 49.

[20] See Gilbert Slater, *The Growth of Modern England* (London: Constable and Co., 1939), p. 614.

[21] E. Lipson, *The Growth of English Society* (London: A and C Black, 1959), p. 317.

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pact was far from negative. Just as land can be irrigated by opening the sluice gates of a dam which has held the water in confinement, so the energies of a people can be released by removing the restrictions. It was so for the English. As the water in an irrigation ditch rises when the sluice gates are opened, so rose England to greatness as the restrictive legislation was repealed. ◈

The next article of this series will discuss "The Moral Base" for England's rise.

IDEAS ON LIBERTY

The Power of an Idea

THE FREE-TRADE CAMPAIGN started under the most difficult odds. Four-fifths of the Members of Parliament represented landlords benefiting from protection — even though the average farmer and the farm laborer did not. The Chartist movement also opposed Corn Law repeal, charging that the League wanted the reform in order to reduce wages. Nevertheless, as a result of Cobden's energy, Bright's eloquence, and the influence of Adam Smith and his disciples, Parliament finally repealed the Corn Laws in 1846 — under the leadership of the great Tory statesman, Robert Peel. Britain now gradually abandoned protectionism in favor of free trade....

As a result Great Britain now entered into its greatest period of prosperity, which lasted, except for cyclical interruptions, until World War I. Large areas of the world profited materially. The British workers profited as much as the employers.

RAYMOND LESLIE BUELL, in *Fortune*, May, 1942

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ALBERT NOCK'S JOB

NICHOLAS SILIA, JR.

OCCASIONALLY the smoke-screen generated by public opinion polls, manipulated news media, and other socio-political forms of gamesmanship tends to daunt even the most ardent proponent of liberty. For we are all human, and yield at times to discouragement.

However, it is during such times that we should try to marshall our inner strength and re-examine our outer goals, for things are not always what they seem. It is, therefore, in our own best interest, as well as the interest of liberty, not to judge by appearances, but in terms of the realities involved.

But how to distinguish one from the other, you ask? Perhaps Albert Jay Nock, founder and editor of the old *Freeman,* has the best solution.

For example, in his classic essay, "Isaiah's Job," Nock made it abundantly clear that his goal was not to convert the masses to any particular philosophy.

"The mass-man," wrote Nock, "is one who has neither the force of intellect to apprehend the principles issuing in what we know as the humane life, nor the force of character to adhere to these principles steadily and strictly as laws of conduct; and because such people make up the great, the overwhelming majority of mankind, they are called collectively *the masses.*"

So, Nock's duty as he saw it was to tend the Remnant, those unique individuals who had, or were willing to develop, the necessary insight and ability to understand and employ ideas on liberty. In distinguishing them from the masses Nock noted: "The line of differentiation between the masses and the Remnant is set invariably by quality, not by circumstance. The Remnant are those who by force of intellect are able to apprehend these principles, and by force of character are able, at least measurably, to cleave to them. The masses are those who are unable to do either."

So Nock's primary purpose,

Mr. Silia, a member of The Nockian Society, is a free-lance writer and poet.

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then, was not to alter public opinion, manipulate news, or convert others to his way of thinking. He merely sought to improve himself and thereby become ever more capable of furnishing other seekers with the inspiration and insight which might further their own personal unfoldment. His job, in short, was to be a sort of catalytic agent for the Remnant.

Knowing beforehand that the masses were not to be transformed or converted, Nock did not become discouraged in his task of servicing the Remnant. And once you clearly see his point you will understand its soundness.

In other words, if your goal is to reform the world to your liking, you are slated for failure from the outset. For that task is impossible – as well as unnecessary. But if your goal is to reform yourself, and incidentally present the truth as you know it to others, then you cannot fail.

Whether anyone accepts the ideas you present is immaterial to your goal. Even though you may convert no one, you still improve society by improving one of its units – yourself.

Nevertheless, you can be sure that your self-improvement will attract the Remnant's attention, although you may not be aware of it. Or as Nock said, ". . . in any given society the Remnant are always so largely an unknown quantity. You do not know, and will never know, more than two things about them: first, that they exist; second, that they will find you. Except for these two certainties, working for the Remnant means working in impenetrable darkness."

This, then, was Nock's job. It is likewise the job of all those who are interested in promoting the cause of liberty. And to them, Nock offers this bit of encouragement: "If, for example, you are a writer or a speaker or a preacher, you put forth an idea which lodges in the *Unbewusstsein* of a casual member of the Remnant and sticks fast there. For some time it is inert; then it begins to fret and fester until presently it invades the man's conscious mind and, as one might say, corrupts it. Meanwhile, he has quite forgotten how he came by the idea in the first instance, and even perhaps thinks he has invented it; and in those circumstances, the most interesting thing of all is that you never know what the pressure of that idea will make him do."

This endeavor will, of course, strike a responsive chord only in those rare individuals who are ready to work for the Remnant. ◈

Write THE FREEMAN for a complimentary copy of "Isaiah's Job," Nock's story of The Remnant. Quantities, 10 for $1.00; 100 for $7.00.

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WELFARISM

THOSE with long memories will recall the bitter criticism leveled at Herbert Hoover for believing that free enterprise prosperity would benefit everybody. They called it the "trickle down" theory, and were quite sarcastic about it.

Hoover, thou shouldst be living at this hour, if only to turn the tables on your critics! For if there was ever a "trickle down" situation, it is the sort of thing that is described in Shirley Scheibla's *Poverty Is Where the Money Is* (Arlington House, $5.95). The billions have gone out for the Jobs Corps, the Community Action programs, the Head Start kindergartens, the Child Development Group of Mississippi, the United Planning Organization of Washington, D.C., and all the other taxpayer-financed contraptions run by the Office of Economic Opportunity, and very little of lasting benefit has trickled through to the "worthy poor" at the bottom of the pyramid.

The difference between Hoover's free capitalism and Sargent Shriver's OEO Welfarism is not to be discovered in the official justifications of two ways of letting riches flow to the bottom. The theoretical justification of capitalism is that it produces savings that provide the man at the bottom with more tools, and therefore with a steadily increasing income. Sargent Shriver would, no doubt, claim a somewhat similar benefit from tax money spent to give skills to young men in the Job Corps. Unfortunately for Shriver, the Hoover theory, save for occasional interruptions (as of 1929), has paid off in practice ever since the beginnings of the

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industrial revolution, whereas the theory of OEO Welfarism has yet to produce anything but a fiasco.

Reading Shirley Scheibla's story of the War on Poverty is a most uncomfortable experience. You feel like laughing at the farcical things that have been going on in the administration of the poverty programs, yet you are constantly aware that real people, not comic strip characters, are being victimized by the social worker jokesters. So you end up feeling rather miserable as Mrs. Scheibla, a Washington correspondent for *Barron's*, unrolls her vast tapestry of ineptitude, cupidity, and plain nonsense.

Disappointing Results

The intentions behind the creation of the Jobs Corps may have been good. But what has become of it all? Mrs. Scheibla tried very hard to get firm figures about job placements resulting from training at Job Corps centers across the country, but nobody has any decent records, and OEO has had to fall back on pollster surveys to find out what becomes of its "graduates." A Louis Harris poll, dated March 1967, showed that 57 per cent of graduates and dropouts were working after leaving the Job Corps, whereas 58 per cent were doing so beforehand. Only 6 per cent had kept their new jobs more than six months, and less than half with jobs were working at what they were trained for in the Corps. The median pay per hour was $1.32, fifteen cents an hour better than before their very expensive training. In the meantime we had had inflation.

Mrs. Scheibla recounts the scandals that beset the Job Corps program. Razor slashings, public drunkenness, lead-pipe bludgeonings, and sex crimes have bedeviled the camp directors. Of course, the same people would have probably been misbehaving in identical ways elsewhere if they hadn't been tapped for rehabilitation through work, so you can't blame it on the OEO. But the point is that there hasn't been much rehabilitation.

Not even the big corporations — Westinghouse Electric, Litton Industries, IBM, Xerox, and so on — have been able to do very much with the training programs which they undertook at Sargent Shriver's behest. The cost figures for the entire Job Corps adventure have been terrific. Representative Edith Green of Oregon, an early advocate of the Corps, put it sharply when she quoted from a letter from a constituent. The letter read: "How can I possibly pay taxes to support people in the Job Corps centers at $13,000 a year? Our total income is $6,000

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a year, and we have three children. We had hoped that we would be able to send our three children to college. Instead of that you are passing a program in the Congress of the United States which says I am to pay taxes to support one person at $13,000 a year."

Says Mrs. Scheibla: "Even figured for enrollees, costs exceeded $13,000 at some centers. According to Senator Strom Thurmond, they came to $22,000 at Camp Atterbury, and Representatives Fino and Goodell found the costs per graduate came to $39,205 at St. Petersburg, Florida."

Loaded for Bear

If the Job Corps have not done the job that old-fashioned vocational training and business apprenticeship programs once did, the Community Action programs across the country haven't done much better. In places, the local action projects have been means for paying $25,000 salaries to directors in cities whose mayors get $18,000. The projects have been havens for Maoists, anarchists, and even orthodox communists whose pasts have been an open book. Before being cut off by OEO, LeRoi Jones's notorious Black Arts Theatre had received $115,000 from New York City's Haryou-ACT (an amalgamation of Harlem Youth Opportunities Unlimited and Associated Community Teams). Jones's credo is apparent not only in his poetry and drama but in some of his more dogmatic utterances. "The force we want," so he has written, "is of twenty million spooks [i.e., Negroes] storming American cities with furious cries and unstoppable weapons. We want actual explosions and actual brutality." When New York policemen raided Jones's theater, they discovered an arsenal of deadly weapons, a rifle range, sharpened meathooks, pistols, knives, and a cache of ammunition.

Head Start to Nowhere

The most appealing of the War on Poverty ideas was the project called Head Start. I am probably a softy, but I still see some potential merit in the idea of creating a pre-kindergarten program for slum children who never see an educational toy, a book, or the evidence of any other cultural amenity, at home. Alas for my lingering hopes, Mrs. Scheibla tells me that the only public evaluation of Head Start shows that the "initial advantages" gained by children in the OEO-sponsored pre-kindergartens lasted only for the first few months when they went on to upper grades. "The teachers themselves," so Mrs. Scheibla quotes from a report,

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"were a more decisive factor than participation in Head Start . . . Head Start children scored higher if they had good teachers, but lower . . . if they had poor teachers. We can easily predict that even the finest pre-school experience for deprived and segregated children will wash out and disappear as these children pass through the grades."

Reading Mrs. Scheibla's summary of OEO appropriations ($1.7 billion for fiscal 1968), I recall Tommy Corcoran's cynical prescription for "spreading the wealth." Back in the nineteen thirties, at the height of WPA, Tommy shook his head and said that the government might do a better job if it "threw the money out of airplanes." ◈

▸ THE NEW ORDEAL BY PLANNING: *The Experience of the Forties and the Sixties* by John Jewkes (London: Macmillan, 1968, 42 shillings)

Reviewed by Peter P. Witonski

IN "Henry IV," Glendower proudly declares, "I can call spirits from the vasty deep." To which Hotspur caustically replies, "Why, so can I; or so can any man; but will they come when you do call for them?" During the past twenty-five years, Britain has twice fallen victim to Glendower's illusion. Twice within less than one generation the British electorate have submitted to the socialist fantasies of a Labour Party bent on summoning spirits from the bathos of economic planning. Twice the Labour Party has carried Britain into the abyss of economic despair.

Britain's postwar experiment with socialism inspired Professor John Jewkes of Oxford University to produce his memorable book entitled *Ordeal by Planning* (1948). It is an illusion, he argued, to believe that elaborately constructed economic blueprints, written by some socialist theoretician in London, can successfully determine the rate of growth and the general health of the economy. "I believe that the recent melancholy decline of Great Britain," he wrote, "is largely of our own making. The fall in our standard of living to a level which excites pity and evokes the charity of many other richer countries, the progressive restrictions on individual liberties, the ever-widening destruction of respect for law, the steady sapping of our instinct for tolerance and compromise, the sharpening of class distinctions, our growing incapacity to play a rightful part in world affairs — these sad changes are not due to something that happened in the remote past. They are due to some-

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thing that has happened in the past two years. At the root of our troubles lies the fallacy that the best way of ordering economic affairs is to place the responsibility for all crucial decisions in the hands of the State."

The tragedy of the centrally planned economy, as the British experience has plainly demonstrated, is that the plan almost invariably fails to achieve its promised ends. Indeed, more often than not, it backfires in unexpected and calamitous ways. But not even a succession of failures convinces the planner that the philosophy behind planning is all wrong. If economic disaster results from his plan, the planner simply comes up with another. Today, in the midst of Britain's second major flirtation with planning, the Labour Party *dirigisme* has succeeded in virtually destroying the economy; and yet the socialist planners continue to turn out "new" and "better" plans. So, once again, Professor Jewkes has taken up the cudgels on behalf of the free economy, re-issuing his *magnum opus* under the title, *The New Ordeal by Planning: The Experience of the Forties and the Sixties*. To the original work he has added a profoundly vivid and perceptive analysis of the failures of central planning since 1961.

It was hard for those Britons who endured the failure of the first wave of planning in the forties to accept, let alone understand, the new wave of planning initiated by the Conservative Government of Harold Macmillan in 1961. In 1964 the Conservative Plan – a rather primitive attempt to stop economic growth and then get it started again when the planners felt the climate was right – was rejected by the electorate in favor of socialism, which promised "a coherent, long-term plan." The socialist plan was little different from the conservative plan, and in the end the entire country found itself in one of the most tragic economic binds in recent history.

Indeed, the present economic plight of Britain is so dire that many informed persons are now persuaded that the idea of planning has been permanently discredited. Certainly the population at large is fed up with planning. And yet, somehow the myth survives, and this is what horrifies Professor Jewkes. The planners will be defeated at the next General Election, simply because they have failed again; but this will not necessarily spell the end of planning in Britain. The British voter has thrown the planners out before and lived to invite them back again. Professor Jewkes fears yet a third renaissance of

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central planning and presents this volume, and all the new information contained therein, as a warning against just such a contingency.

It is Professor Jewkes' firm belief that the British Government, like *all* governments, has only limited power to do good, but virtually unlimited powers to do harm. Government must get its priorities straight. Instead of experimenting with all sorts of fantastic planning schemes, it should get back to its primary duties of providing for national defense, curbing internal violence, and maintaining the value of the currency. In recent years, the British government has failed in all these tasks. Instead, it has created a welfare state that is threatening the very existence of Britain as an economic entity.

"The people never give up their liberties," Edmund Burke wrote, "but under some delusion." It is clear that the British were deluded into believing the promises of both the Conservative and Socialist planners, and that they are only just now – at the nadir of their country's political history – beginning to face up to the evils of planning per se. Economically depressed, deprived of many of their traditional freedoms, they are fast turning away from the ideology of planning, hopefully toward the kind of free economy Professor Jewkes advocates. Until the fallacious thinking behind central planning is properly refuted economic progress will be almost impossible. Professor Jewkes has written such a refutation, and it is sincerely hoped that his views will reach a large public on both sides of the Atlantic. ◈

▸ GEORGE WASHINGTON in the American Revolution (1775-1783) by James Thomas Flexner (Boston: Little, Brown & Co., 1968), 599 pp., $10.00.

Reviewed by Robert M. Thornton

THE EARLY American scene was crowded with great men – Adams, Jefferson, Franklin, Madison, and Hamilton, to name the most prominent intellectual leaders, 1764-1789. But none of these worthies could have filled the shoes of the military leader of the American "revolution," George Washington. And he had the strength of character and devotion to the good cause to stick at a difficult job for eight long years.

The real humanity of our first great national hero has been obscured, on the one hand, by portraying the man as a demigod, and, on the other, by debunkers who write him off as a self-seek-

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ing and philandering plutocrat. The scholarly multivolumed study by Douglas Southall Freeman avoids these extremes but sometimes loses Washington amidst all the detail. And the sheer mass of works on Washington tends to scare off some who are interested in learning about the man. Now at last we have Flexner's work (the book under review is the second of a projected three-volume study) which not only avoids the extremes of opinion but carries its scholarship lightly and never loses sight of its subject. Washington is the central figure of this canvas and Flexner, for all his admiration, has not been afraid to paint him, warts and all.

Washington was not a great orator whose words we can memorize and cherish; neither was he a fiery commander brandishing his sword over his head as he leads singlehandedly an attack on the enemy. His much less glamorous job can be fully appreciated only by those who have themselves had the responsibilities of leadership, no matter on how small a scale. Consider, if you will, the difficulties Washington had to overcome. (1) In his previous military experience he had held only minor commands but here he was, in 1775, the commander in chief. (2) He was not the warrior type, along the lines of a "Stonewall" Jackson or a George Patton, but a man of peace, in love with his home and his land, and always yearning to return to them. (3) Trained officers were scarce and those with foreign experience often looked down on him as a provincial, sometimes doing more harm to the cause than to the enemy. (4) His forces were more rabble than army, hard to keep together and resistant to discipline. (5) Logistics was a constant nightmare, his men often suffering from lack of food, clothing, and shelter in a land of plenty. (6) Congress dragged its feet on touchy matters and eagerly passed the buck to General Washington on many occasions. (7) Individual states, jealous of each other and of Congress, failed to respond when called upon. (8) Congress lacked the power to tax so the Continental army was nearly always broke (the paper money printed by the Continental Congress was "not worth a Continental"). (9) Civilian leaders were wary of the military so they often hampered Washington's efforts to make his army more efficient. (10) Many colonists were, if not opposed to independence from Great Britain, not very helpful to the patriots; and there were the usual faint hearts too cautious to take any definite stand. This list could be extended but surely the point

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is already clear: given Washington's job, few men would have stuck it out.

But what really sets Washington apart from other men was his absolute refusal to accept the dictatorial powers some wanted to grant him after the war for independence had dragged on and on without victory. After the years of frustration it must have been very tempting to Washington to accept the proffered power and use it to bring order out of the chaos and put down opposition to the cause. But he flatly refused.

Flexner closes his book with an essay on Washington that reminds us why among the leaders of our young republic there were so many men of integrity, why the best men, it seems, got to the top more often then than now. Leaders of Washington's day, writes Flexner,

> did not normally kowtow to the electorate. They did not wander the fields taking public opinion polls. They gained ascendancy by being willing and able to bring their intelligence and property to bear in effectively helping their less powerful and less informed neighbors to achieve ends which they persuaded their followers were for the common good. Nothing in Washington's Virginia training urged him to seek popularity by shaking hands and grinning. And his elevation to leadership in the Revolution had not resulted from electioneering – quite the reverse. He had sought to evade the responsibility which had been forced upon him.

Since Washington did not have to stoop to conquer, "no important outside pressure impeded [his] efforts to steer by the highest stars. He could wholeheartedly pursue his conviction that he could serve his fellowmen best by serving the great principles." And, declares Flexner, "it was in his ability to recognize the great principles that Washington's most fundamental greatness lay." ◈

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